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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to food

Report of the High Commissioner for Human Rights submitted in accordance with Commission resolution 1999/24

CONTENTS

		Paragraphs	Page
Introduction		1 - 5	2
I.	SUMMARY OF REPLIES	6 - 29	3
II.	REVIEW OF FURTHER PROGRESS MADE IN THE DEFINITION OF THE RIGHT TO ADEQUATE FOOD IN INTERNATIONAL LAW	30 - 55	7
	A. Administrative Committee on Coordination	30 - 32	7
	B. Food and Agriculture Organization of the United Nations (FAO)	33 - 43	8
	C. Final study on the right to food	44 - 51	10
	D. Action by the Sub-Commission	52 - 55	11
III.	CONCLUSIONS	56 - 58	12

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Introduction

1. On 17 November 1996, the World Food Summit adopted by consensus the Rome Declaration on World Food Security and the World Food Summit Plan of Action, which outlined ways to achieve universal food security. Under objective 7.4 (e) of the Plan of Action, Governments, in partnership with all actors of civil society, undertake to "invite the United Nations High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the United Nations system and appropriate intergovernmental mechanisms, to define better the rights related to food in article 11 of the International Covenant on Economic, Social and Cultural Rights and to propose ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all". The Commission on Human Rights endorsed this request in its resolutions 1997/8, 1998/23 and 1999/24.

2. As a concrete and practical response to objective 7.4 (e), the Office of the High Commissioner for Human Rights convened in December 1997 the first Consultation on the Right to Adequate Food (see E/CN.4/1998/21). In resolution 1998/23, the Commission endorsed the proposal made by the Consultation to have a follow-up meeting in 1998 to pursue the discussions on the content and means of implementation of the rights related to adequate food in order to provide the High Commissioner with a full set of recommendations concerning her response to the request of the World Food Summit. That follow-up consultation was convened by OHCHR at the Food and Agriculture Organization of the United Nations (FAO). It was co-hosted by FAO and held from 18 to 19 November 1998 (see E/CN.4/1999/45).

3. At its fifty-fifth session the Commission, in adopting resolution 1999/24, reaffirmed that hunger constitutes an outrage and a violation of human dignity and, therefore, requires the adoption of urgent measures at the national, regional and international level for its elimination. It considered intolerable that more than 800 million people, especially women and children, throughout the world, and particularly in developing countries, do not have enough food to meet their basic nutritional needs. It stressed the need to make efforts to mobilize and optimize the allocation and utilization of technical and financial resources from all sources, including external debt relief for developing countries, to reinforce national actions to implement sustainable food security policies. The Commission also requested the High Commissioner to transmit the resolution to Governments, relevant specialized agencies and programmes, treaty bodies, as well as non-governmental organizations, and invited them to present comments and suggestions for the elaboration of the content and means of implementation of the rights related to food, taking into account the outcome of the second consultation.

4. The present report is submitted pursuant to paragraph 9 of resolution 1999/24. Section I contains summaries of the replies received by 30 November 1999. Section II contains a review of the progress made in the definition of the right to adequate food in international law. Section III refers to a number of conclusions.

5. The attention of the Commission is drawn to General Comment 12 on the right to adequate food adopted by the Committee on Economic, Social and Culture Rights on 11 May 1999. The text is available in Committee document E/C.12/1999/5 and is annexed to the updated study on the right to food submitted by Mr. Asbjørn Eide to the Sub-Commission on the Promotion and Protection of Human Rights in 1999 (E/CN.4/Sub.2/1999/12), it is also available on the treaty bodies database of the United Nations Human Rights Web site (www.unhchr.ch/tbs).

I. SUMMARY OF REPLIES

6. In implementation of Commission resolution 1999/24, the High Commissioner sent on 21 September 1999 notes verbales to Governments and letters to relevant specialized agencies and programmes, treaty bodies, as well as non-governmental organizations, inviting them to submit comments and suggestions. By 30 November 1999 replies had been received from one Government, one specialized agency, two United Nations programmes and three human rights treaty bodies.

7. The Government of Kuwait stated that it is doing its utmost to ensure that basic commodities and requisites are available to its citizens and residents at acceptable prices as part of the State's policy of countering the rising cost of living through the subsidizations of commodity prices. To this end the State purchases the requisite commodities and foodstuffs and makes them available to its citizens and residents at subsidized prices. The subsidized basic foodstuffs are rice, sugar, milk, vegetable oil and food and milk for infants. Construction materials are also subsidized. The Ministry of Commerce issues ration cards for these commodities to needy families wishing to receive them. By the end of 1995, 94,882 such cards had been issued for the benefit of 891,113 individuals of whom 63 per cent were Kuwaitis.

8. In addition, the State grants agricultural land to citizens wishing to develop it and also provides them with financial support to enable them to produce and develop agricultural products.

9. Moreover, the State believes that it has an international responsibility to contribute to economic development endeavours in the poor developing countries in order to free them from hunger and poverty and, to this end, has established numerous bodies and institutions specialized in the provision of economic aid to help those countries to implement their economic and social programmes.

10. In 1988 the head of State proposed in the United Nations that the interest be waived on the debts of the developing countries. In 1990 Kuwait waived the interest on the debts of countries which had received loans from Kuwait and also looked into the question of the principal of the debts of the poorest countries. In 1995 it cancelled the debts that some Arab countries owed to Kuwait as well as the accumulated interest on the debts of the developing countries.

11. In 1991, at the global consultation on the effective enjoyment of the right to development as a human right, Kuwait stressed that the increasing burden resulting from indebtedness had the severest impact on the poorest and most vulnerable sections of society and also had evident effects on human rights.

12. Finally, Kuwait is one of the main donors of aid, particularly to the poor developing countries, exceeding 4 per cent of its national income, which is a high proportion amounting to more than 1 billion dollars per year.

13. The International Monetary Fund, in its reply, stated that it was established to promote international monetary cooperation, exchange stability and orderly exchange arrangements, to foster economic growth and high levels of employment, and to provide temporary financial assistance to countries under adequate safeguards to help ease balance of payments adjustments. In implementing this mandate, the focus is on macro issues and not on the right to food, or any other human right. However, the Fund is available to work with individual member Governments to establish a stable macroeconomic and financial framework conducive to the implementation of a Government's approach to the right to food, other human rights, or other appropriate policy goals of the authorities.

14. The external debt situation for a number of low-income countries, mostly in Africa, has become very difficult. IMF and the World Bank have designed a framework to provide special assistance for heavily indebted poor countries (HIPC) that pursue IMF- and World Bank- supported adjustment and reform programmes (which can include policies to implement the right to food), but for which traditional debt relief mechanisms are insufficient. The HIPC Initiative entails coordinated action by the international financial community, including multilateral institutions, to reduce to sustainable levels the external debt burden of these countries. The Initiative focuses on ensuring additional finance for social sector programmes, primarily basic health and education, for a group of 41 heavily indebted poor countries.

15. A country must satisfy a set of criteria to be eligible for special assistance, namely: be eligible for concessional assistance from IMF and the World Bank; face an unsustainable debt burden, beyond available debt-relief mechanisms such as the Naples terms (under which low- income countries can receive a reduction of eligible external debt of up to 67 per cent in net present value terms); and establish a track record of reform and sound policies through IMF- and World Bank-supported programmes for a period of three years. Once declared eligible for support under the Initiative, the country must establish a further three-year track record of good performance under IMF/World Bank-supported programmes. This period may be shortened for countries that already have a sustained record of strong performance. In April 1999, total costs for providing assistance to 26 countries expected to require it were estimated at US$ 12.5 billion. The cost to IMF of its participation in the HIPC Initiative was estimated to be US$ 1.2 billion.

16. The initial deadline for countries to enter the first phase was extended from September 1998 to December 2000. The HIPC Initiative was on the agenda of the Cologne summit of heads of Government of the members of the Group of seven (G-7) and Group of eight (G-8) countries in June 1999, who supported faster, deeper and broader debt relief for the poorest countries that demonstrate a commitment to reform and poverty alleviation.

By July 1999 12 countries were considered for eligibility under the Initiative, but the assistance was granted to 7 (Uganda, Bolivia, Burkina Faso, Guyana, Côte d'Ivoire, Mozambique and Mali). Debt relief expected for all seven countries totals more than US$ 6 billion, in nominal terms, and will reduce the net present value of all these countries' debt by over US$ 3 billion.

17. The World Food Programme (WFP) views the United Nations Development Assistance Framework (UNDAF) as an important mechanism around which the United Nations agencies and Governments, in consultation with civil society and the donor community, can coordinate their capacities and pool their resources towards the realization of rights related to food and nutrition. At the second consultation on the right to food, WFP stressed that the definition of the right to food must include a reference to both the elimination of gender-related inequalities and emergency situations. The latter would include the requirements that the parties to the conflict must allow free passage to all relief supplies essential for survival, including foodstuffs, if they are unable to supply the needs of the population, and should facilitate the work of the humanitarian organizations and guarantee the protection of relief personnel. Starvation as a method of warfare is prohibited, and resources indispensable to the survival of the population, such as agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, must be protected.

18. WFP continues to work at the national level, in collaboration with its partner organizations, to ensure that its food aid programmes are targeted at the most vulnerable and food insecure. The development by OHCHR of training materials on human rights for United Nations system-wide use, tailored to incorporate issues of particular concern to the individual food agencies, is an important initiative. This will assist in the clarification of the content and means of implementation of the rights related to food and nutrition.

19. The United Nations Children's Fund (UNICEF) stressed that the fact that the AIDS virus can be passed by an HIV-positive mother to her child through breast milk should not be allowed to undermine breastfeeding for the majority of infants around the world whose health and chances of survival are and will be greatly improved by it. While many Governments are considering ways to make alternatie feeding options available to HIV-positive mothers who decide not to breastfeed, this must not lead to a spillover of artificial feeding to infants of HIV-negative mothers.

20. The International Code of Marketing of Breast Milk Substitutes is of particular relevance since it aims to regulate the distribution of free or subsidized supplies of breast milk substitutes and to protect children fed them. The Code does not prevent Governments making breast-milk substitutes available to HIV-positive mothers. The Code also says that breast-milk substitutes may be donated to social welfare institutions but should be given only to infants who have to be fed on the substitutues, including infants of HIV-positive mothers who have chosen this option.

21. The Chairperson of the Committee on Economic, Social and Cultural Rights pointed out that the Committee has accumulated significant information regarding the right to food through examination of States parties' reports since 1979. The adoption on 11 May 1999 of General Comment 12 on the right to adequate food was in response to the request of States, at the World Food Summit, for a better definition of the rights relating to food in article 11 of the Covenant,

and to a special request to the Committee to give particular attention to the Summit Plan of Action in monitoring the implementation of the specific measures provided for in article 11 of the Covenant.

22. The Chairperson of the Human Rights Committee reported that while the International Covenant on Civil and Political Rights does not contain a provision on the right to food, several articles of the Covenant may be of relevance, notably article 6, the right to life. The concluding observations adopted by the Committee following the examination of periodic reports show that there are a considerable number of States parties to the Covenant which have problems of access to food.

23. The Committee has also produced jurisprudence under the Optional Protocol with regard to the right to life, which is available in the annual reports of the Committee to the General Assembly and on the Human Rights Web site. In addition, the Committee has issued several general comments under article 40 of the Covenant, in particular General Comment 6 on article 6 of the Covenant (the right to life), 15 on "The position of aliens under the Covenant", 17 on the rights of children, and 18 on non-discrimination.

24. The Chairperson of the Committee on the Rights of the Child stated that the Convention on the Rights of the Child, ratified by 191 States reaffirms the indivisibility and interdependence of all human rights by grouping in one instrument civil and political rights with economic, cultural and social rights. Therefore, the right of children to food needs to be implemented in the light of many other provisions of the Convention, such as the right of non-discrimination (art. 2), the principle of the best interests of the child (art. 3), and the right to life, survival and development (art. 6).

25. The Convention refers directly to the right to food and nutrition in its articles 24 (right to health) and 27 (right to an adequate standard of living). In a broader sense the right to food is also covered in the Convention by other provisions such as articles 6 (the right to life, survival and development) and 22 (right to humanitarian assistance).

26. By ratifying the Convention, States parties have committed themselves to take all measures to prevent and "combat [...] malnutrition" of children and to guarantee "the provision of adequate nutrition" (art. 24 (c)), "to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health nutrition, the advantages of breastfeeding ..." (art. 24 (e)), and "... to assist parents and others responsible for the child to implement this right and [...] in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing" (art. 27.3).

27. In order to prepare its dialogue with States parties, the Committee has established a pre-sessional working group which meets, before the public session, with United Nations bodies and agencies as well as other competent bodies to seek expert advice. In this framework, UNICEF and the World Health Organization (WHO) regularly inform the Committee about

measures taken by States parties to implement the right to food. National and international non-governmental organizations also provide expertise in this area. For instance, the specific issue of breastfeeding has often been discussed by the Committee with States parties, including with regard to the implementation of the International Code of Marketing of Breast Milk Substitutes.

28. In its concluding observations the Committee recommends, whenever appropriate, to States parties to take effective measures to ensure the full implementation of the right to food. Many States parties encounter difficulties in implementing it, in many cases owing to poverty and lack of access to healthy food, sometimes to discriminatory practices and/or the persistence of traditional harmful practices. The Committee has also often noted the negative impact of the non-respect of the right to food on the enjoyment by children of their other rights, such as the right to education and to leisure.

29. The Committee also feels that knowledge about the signification and implications of the right to food of children, as recognized by the Convention, is still limited and that most initiatives and studies in this field do not adequately address the child rights perspective.

II. REVIEW OF FURTHER PROGRESS MADE IN THE DEFINITION OF THE RIGHT TO ADEQUATE FOOD IN INTERNATIONAL LAW

A. Administrative Committee on Coordination

30. From 8 to 15 April 1999 OHCHR hosted in Geneva the twenty-sixth session of the Subcommittee on Nutrition, of the Administrative Committee on Coordination (ACC/SCN), an inter-agency mechanism for harmonizing nutrition policy in some 16 United Nations funds, programmes and agencies, as well as up to 10 bilateral agencies and numerous non-governmental organizations dealing with specialized matters including vitamin A, iron and iodine deficiencies, nutrition, ethics and human rights, health education and food safety, foetal and infant malnutrition, nutrition in emergencies, etc. The nutrition community has identified nutrition indicators to monitor nutrition trends in countries, regions and globally.

31. On 12 April 1999 a symposium on the substance and politics of a human rights approach to food and nutrition policies and programmes was held. In a keynote speech, the High Commissioner for Human Rights said that the meeting was a practical example of the extensive cooperation between United Nations agencies towards the full realization of the human right to food and nutrition, as recognized by the Universal Declaration of Human Rights and the principal human rights conventions. Its realization was inseparable from appropriate economic, environmental and social policies oriented towards the eradication of poverty and the satisfaction of basic needs.

32. She added that while cooperation between the agencies and the treaty bodies had developed well during the last few years, greater emphasis should be put on sharing information and the development of joint indicators to measure achievements and shortcomings in the realization of food and nutrition rights. United Nations agencies could provide not only legal, political and administrative advice to States on how better to meet their obligations regarding the right to food and nutrition, but also help States in monitoring their implementation of that right.

B. Food and Agriculture Organization of the United Nations (FAO)

33. The most recent estimate of the number of the undernourished, which refers to the years 1995-1997, is 825 million (791 million in the developing world and 34 million in the developed regions). This represents a substantial decline from the estimate of 831 million in the developing countries for the period 1990-1992. The decline, however, corresponds to an annual average of only 8 million, whereas the decrease required after 1997 to meet the World Food Summit target of halving the number of the undernourished by the year 2015 is nearly 20 million per annum.[1]

34. However, the number of undernourished in sub-Saharan Africa (180 million) has been consistently rising. On the other hand, significant progress towards reducing undernourishment has been made in East and South-East Asia (241 million), as well as in South Asia which still has the highest number of undernourished (284 million). The rather stagnant situation in the Near East and North Africa (33 million) and Latin America and the Caribbean (53 million) is preoccupying, even though both the percentage and number of undernourished persons in these regions are relatively small.

35. Finally, the prevalence of under-nutrition in the industrialized countries is rather marginal, with the number declining only slightly from 9 to 8 million during the early 1990s. However, in the countries in transition there has been an increase in the number of the undernourished in the same period, from 20 to 26 million.

36. The international financial crisis continues to be a subject of concern. In addition to the economic and social impact, the crisis has also affected both the agricultural production and trade of the most strongly affected countries as well as international markets for agricultural products at large. The current provisional estimates point to stagnating global agricultural production in 1998, which would thus be, on a global basis, the worst agricultural year in the 1990s.

37. In addition, the number of countries facing food emergencies continues to be high and stood at 37 as of August 1999. Although the highest concentration of these situations is in Africa, no region is spared.

38. Indications from August for the 1999 crop point to a small reduction in world cereal production for the second consecutive year. Over the last two years international prices for most cereals remained under downward pressure owing to relatively abundant supplies and depressed economic conditions in many parts of the world. Only in Africa south of Sahara did average annual agricultural production growth over the period fall short of 3 per cent. The rate of expansion of only 2.5 per cent implies that alone among the developing country regions output growth in Africa south of the Sahara failed to exceed population growth.

39. Recent estimates of official development assistance (ODA) to agriculture indicate a continued decline both in real terms and as a share of total ODA. Forecasts of cereal food aid shipments in 1998/99 reached 9.5 million tonnes, an increase of more than 3 million tonnes over the preceding year to the highest level recorded since 1993/94. While there was an increase in the net flow of private capital to developing countries and countries in transition, ODA to

agriculture has stagnated. In fact, in 1997, 14 donor countries had actually reduced their ODA to least developed countries. The share of agriculture in total ODA was halved (from 30 per cent to 15 per cent) between the 1980s and the first half of the 1990s.[2]

40. On the recipient side, the bulk of the increase in food aid shipments went to the Russian Federation, in form of cereals (1.3 million tonnes). Shipments to Bangladesh also rose substantially (1.6 million tonnes). Cereal food aid to Indonesia exceeded 700,000 tonnes. Larger shipments were also registered to the hurricane-ravaged countries of Central America, especially Honduras, Guatemala and Nicaragua. In Africa cereal food aid to most countries fell, the main exceptions were Eritrea, Guinea-Bissau, Sierra Leone, the Sudan and Zimbabwe. In Asia, additional shipments were registered to Mongolia and Nepal, while cereal donations to many other countries fell drastically, including to the Democratic People's Republic of Korea, one of the largest food aid recipients in recent years. Similarly smaller shipments were registered to Armenia, Sri Lanka, Azerbaijan, Georgia, Kyrgyzstan and Tajikistan.[3]

41. In June 1999 major donors approved the new Food Aid Convention (FAC) to be implemented for an initial period of three years starting in July 1999. The new Convention calls for a more flexible approach to food aid by expanding the list of eligible commodities and the method of contributions. Overall, the total volume of commitments under the Convention is 4.8 million tonnes, roughly equivalent to the previous one.

42. The FAO Committee on World Food Security, meeting in Rome from 31 May to 3 June 1999, welcomed General Comment 12 adopted by the Committee on Economic, Social and Cultural Rights as an important step in implementing Objective 7.4 of the World Food Summit Plan of Action. The Committee noted the reference in the General Comment to the need for United Nations agencies, including FAO, to provide assistance to developing countries, upon request, and noted that this assistance should draw fully on the expertise of the Office of the High Commissioner for Human Rights. The Committee commended the collaboration between FAO and the treaty body, welcoming the proposal that the cooperation between them should be strengthened on a continuing basis.[4]

43. In its assessment of the world food security situation, the Committee recommended a number of improvements to the indicators to be used for monitoring the current situation, among them to broaden the commodity coverage of the global assessment to cover all staple foods, not only cereals, to reflect changes in composition of the diet, to include such indicators as poverty index, income distribution and purchasing power, trade position, terms of trade, external debt, private capital flows and ODA.[5] It also considered the introduction of gender- and age-disaggregated indicators and indicators of relevance for specific vulnerable groups, better coverage of environmental and climatic conditions, and attention to ethnicity and its effects on dietary patterns and social behaviour. In addition, the indicators used should be comparable across countries and the focus of the monitoring within countries should be on the food security status of individuals, with additional monitoring of food security at household level where possible.[6]

C. Updated study on the right to food

44. The former Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Mr. A. Eide, updated his study on the right to food in a report submitted to the Sub-Commission at its fifty-first session (E/CN.4/Sub.2/1999/12). According to Mr. Eide, there is an international recognition of the right to be free from hunger and to adequate food as a human right that the relevant international institutions now endorse.

45. He addressed recommendations to States, the High Commissioner for Human Rights, the treaty bodies, the Commission, the specialized agencies, as well as NGOs, professional organizations and academic institutions.

46. Regarding States, they should elaborate a strategy for the realization for everyone within their territory of freedom from hunger and the right to adequate food. National indicators on food insecurity should be included and national nutrition councils be established. The international cooperation should lead States to take joint and separate action to achieve the full realization of the right to adequate food. They should respect the enjoyment of the right to food in other countries, refraining from using food as a weapon. In addition, they should protect the right to food in other countries, monitoring the impact of their external aid and trade, as well as the impact of the activities of transnational corporations under their jurisdiction. Moreover, States should facilitate access to food in countries other than their own and provide the necessary aid when required.

47. He also recommended that the High Commissioner continue to take the leadership role in promoting the implementation of the right to food and nutrition and developing a comprehensive strategy for this purpose. In particular, OHCHR should organize a broad consultation to draw up a coherent United Nations strategy, strengthen the Office's capacity to deal with the substantive issues by appointing an external adviser, improve institutional and operational links between the concern for human rights and the mandates of the specialized agencies; study the impact of globalization on the food and nutrition situation of vulnerable groups and remedies; organize a third expert consultation on implementation mechanisms at country level; organize a consultation among treaty bodies, food agencies, humanitarian organizations, and international financial and trade institutions to enhance dialogue among them; and undertake a study to clarify the joint and separate responsibilities of States to cooperate in ensuring access to food for all in times of emergency.

48. As regards the human rights treaty bodies, Mr. Eide recommended that the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child should establish working relationships among themselves and with specialized agencies, as well as ACC/SCN. The committees should also revise their guidelines for State reporting on the right to food.

49. Mr. Eide also recommended that the country rapporteurs of the Commission on Human Rights include in their reports investigations into violations of the right to adequate food. In addition, the Commission should appoint a thematic rapporteur on freedom from hunger and the enjoyment of adequate food and adopt voluntary guidelines in this regard.

50. The specialized agencies should individually define their human rights objectives and goals within their respective mandate, strengthen their staff's capacity to analyse the economic, social and political context in which they work, recognize the importance of training on a rights-based approach, and further develop indicators and benchmarks concerning the achievements and shortcomings in the realization of food and nutrition rights. Moreover, FAO should assist in drafting national framework legislation; UNICEF should make available model legislation on the right to adequate food for infants and young children; and FAO, WFP and the International Fund for Agricultural Development (IFAD) should cooperate on the implementation of the right to food at the national level. Lastly, agencies' policies should not have a negative effect on the implementation by States of the right to food and nutrition.

51. Finally, NGOs should devote more attention to economic and social rights, including the right to food and nutrition. In addition, more interaction is needed between human rights and development organizations. On the other hand, legal and judicial organizations should train their members in addressing economic and social rights. Universities should also organize training courses on the interface between human rights law and food and nutrition policy analysis and planning, especially as it relates to globalization processes, sustainable agriculture, gender issues and the global burden of disease.

D. Action by the Sub-Commission

52. The recommendations contained in Mr. Eide's updated study on the right to food were welcomed by the Sub-Commission on the Promotion and Protection of Human Rights in its resolution 1999/12 of 25 August 1999. It endorsed in particular the recommendation to the High Commissioner to ensure, through various measures, a continued follow-up of the evolving process to identify the steps needed to implement the rights of all to adequate food and to be free from hunger, drawing up a coherent United Nations strategy for this purpose which could also serve as a model for how to approach economic, social and cultural rights more generally.

53. The Sub-Commission also endorsed the recommendation to States to elaborate national strategies for the realization for everyone within their territory of the rights to adequate food and to be free from hunger, including the elaboration of framework legislation as proposed in General Comment No. 12 of the Committee on Economic, Social and Cultural Rights.

54. It endorsed specifically the recommendation that the High Commissioner should organize a third expert consultation, following those held in 1997 and 1998, this time with a focus on implementation mechanisms at the country level, inviting government experts to bring experiences from their countries as a contribution to the operationalization at the national level of the right to food, including the drawing up of a framework law. It also endorsed the recommendation that the High Commissioner organize a consultation involving representatives of the treaty bodies and relevant agencies and humanitarian organizations and the international financial and trade institutions, to enhance dialogue and encourage consultations on a regular basis and to prevent activities which would cause a further deterioration in the enjoyment of the right to adequate food, taking into account General Comment No. 10 and the working paper by Mr. Joseph Oloka-Onyango and Ms. Deepika Udagama on human rights as the primary objective of international trade investment and finance policy and practice (E/CN.4/Sub.2/1999/11).

55. Lastly the Sub-Commission requested the Commission to endorse the conclusions and recommendations contained in the updated study and expressed the wish for its publication by the United Nations in all the official languages and its wide distribution.

III. CONCLUSIONS

56. The most recent FAO estimate of the number of undernourished, which refers to 1995-1997, stands at 825 million (791 million in the developing world), showing a decline which corresponds to an annual average of only 8 million. However, the decrease required from 1997 onwards to meet the World Food Summit target of halving the number of the undernourished by the year 2015 is nearly 20 million per annum.

57. On the other hand, there is an international recognition of the right to be free from hunger and to adequate food as a human right that the relevant international institutions now endorse, creating momentum to act in a concerted way to eliminate the scourge of hunger from humanity.

58. With the adoption on 11 May 1999 by the Committee on Economic, Social and Cultural Rights of General Comment No. 12, the international community now has an authoritative definition of the rights related to food in article 11 of the International Covenant on Economic, Social and Cultural Rights. The general comment has also proposed ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit. The implementation of the recommendations of the general comment should now be a matter of the utmost priority.

Notes

[1] FAO, The State of Food and Agriculture 1999, September 1999, pp. 1-7.

[2] Report of the twenty-fifth session of the Committee on World Food Security (Rome, 31 May-3 June 1999), FAO document CL 116/10, para. 3.

[3] FAO, supra note 1, pp. 25-26.

[4] FAO, supra note 2, para. 4.

[5] Ibid., para. 9.

[6] Ibid., paras. 13 and 33.

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The right to food

Report of the High Commissioner for Human Rights submitted in accordance with Commission resolution 1999/24

SUMMARY OF REPLIES

1. In implementation of Commission resolution 1999/24, the High Commissioner sent on 21 September 1999 notes verbales to Governments and letters to relevant specialized agencies and programmes, treaty bodies, as well as non-governmental organizations, inviting them to submit comments and suggestions. By 30 November 1999, replies had been received from one Government, one specialized agency, two United Nations programmes and three human rights treaty bodies. Summaries of these replies are contained in document E/CN.4/2000/48.

2. Since then, the High Commissioner has received additional replies from four Governments, Costa Rica, Cuba, Pakistan and Thailand, which are summarized in this addendum.

Costa Rica

3. Costa Rica referred to the general legal framework created by articles 50 and 51 of the Constitution as well as to the Children's and Adolescent's Code (Law No. 7739 of 6 January 1998), which placed the State and its institutions under an obligation to provide food to minors and pregnant women when required by family, medical or employment circumstances.

4. So far, per capita subsidies of 48,000 colones have been provided by the Mixed Social Assistance Institute (IMAS), covering 50 per cent of the total number of 9,000 adolescents considered to be living in extreme poverty. IMAS, established by the law of 1971, is responsible for resolving the problem of extreme poverty in the country through the formulation and implementation of a national social and human resources promotion policy for the most disadvantaged sectors.

5. It is the Government's intention to tackle the structural problems underlying poverty and to promote a strategy with a view to reducing it from the present 19.7 per cent to 16 per cent in 2001 by means of programmes which will directly benefit families living in poverty. In this context, food constitutes one of the cornerstones of basic primary assistance and for this reason social programmes have been formulated to ensure the equitable distribution of food; however, it has not been possible so far to cover all families living in poverty.

6. School food vouchers, school canteens, community homes and health services have been provided under these social programmes. Yet much of the assistance under these programmes has gone to middle-income groups and not to the most unprotected because, among other things, the functions of social assistance agencies overlap and social programmes are fragmented and lack proper coordination.

7. It is estimated that 270,000 children are at present living in extreme poverty. Of this number, 116,000 are adolescents and young persons; about 45,000 are at risk from a social point of view and approximately 6,000 eke out a living on the streets of the capital. In 1996, the infantile malnutrition rate had declined to 22.44 per cent. The Infantile Nutrition and Development Programme is directed above all at infants and children up to 7 years of age living below the poverty line as well as pregnant women or breastfeeding mothers living below the poverty line, the emphasis being on adolescents.

8. Moreover, 90 per cent of schools and 70 per cent of students are covered by the school canteen programme. An amount of 8.707 million colones was earmarked for this programme for 1999 and 4.550 million colones are spent on food, namely, snacks and lunch. Breakfast is also provided in schools with only one teacher, which are given priority. The programme covers a total of 477,500 students for 200 days in the year.

9. The First Vice-President of the Republic is in charge of the "Solidarity Triangle" programme established by Executive Decree No. 27076 (Official Gazette of 5 June 1998). Its objective is the continuing development of human resources with all those concerned participating in programmes and projects designed to benefit families and communities. Interaction between the community, local government authorities and the national Government is promoted so as to develop a sense of association with and responsibility for the project. As at 1 November 1999, the Triangle programme had been extended to cover 53 per cent of the national territory and 30 per cent of the total population.

10. In the case of food, the Triangle intends to increase the budget of the school canteen programme by 600 million colones, provide comprehensive assistance to 130,000 children of under 6 years of age, provide milk to 90,000 persons and food packages to 7,000.

Moreover, 1.458 million colones will be earmarked to provide assistance to 4,800 families (23,000 persons) who are socially disadvantaged and living in extreme poverty and who will receive a supplementary family income.

Cuba

11. Cuba considers that a sound point of departure for making clear what is meant by the right to food is the definition given in article 4 of the so-called "Code of conduct on the human right to adequate food" which was adopted in September 1997 by a number of non-governmental organizations. However, this definition could be improved by the addition of the following three points:

(a) Recognition of and respect for the diversity of nutritional habits;

(b) Inclusion of a reference to the elimination of inequalities on grounds of sex and the need to give greater priority to children and the elderly; and

(c) Codification of the prohibition to deny individuals and peoples access to food whether in the context of military strategies, the application of unilateral coercive measures or international sanctions designed to exert political and economic pressure.

12. Measures for the implementation of the right to food should take the following into account:

(a) Although the State is primarily responsible for the implementation of this right and should therefore adopt a strategy consistent with its resources and capacities to achieve its individual goals, it is nevertheless true that in a world of increasingly interlinked institutions, societies and economies, efforts must be coordinated and responsibilities shared. The right to solidarity should be recognized and codified;

(b) A peaceful, stable and enabling political, social and economic environment is the essential foundation which will enable States to give adequate priority to food security and poverty eradication as well as sustainable and equitable development;

(c) Promotion of suitable technology transfer policies and programmes, development of technical know-how and training corresponding to the needs of the developing countries;

(d) Elimination of the untenable consumption and production models of the industrialized countries;

(e) Adoption of urgent measures for the alleviation and cancellation of the external debt of the developing countries and in particular that of the poorest and highly indebted countries;

(f) Prohibit the adoption of coercive unilateral measures not in accordance with international law and the Charter of the United Nations which endanger food security and use food as an instrument of political and economic pressure.

Pakistan

13. Pakistan stated that the money collected through *Zakat* and through the institution of *Bait-ul-Mal* (Public Treasury) is used to provide assistance to the poor. A food stamp system is also functioning to provide food items at nominal or subsidized prices. A system of social protection has been introduced to provide the poor with some kind of income support. The self-targeting measures guaranteeing work on public project in return for the subsistence wage has been introduced. Nutrition programme, feeding programmes in school and food for work are being experimented on a small scale to provide a safety net to those living in extreme poverty.

14. The Aga Khan Rural Support Programme, the National Rural Support Programme, the Orangi Pilot Project and Edhi Trust are fighting against extreme poverty. Recently, the Pakistan Poverty Alleviation Fund has been established to tackle the issue of poverty by providing micro credit, improvement of local level structure and institutional building.

Thailand

15. Thailand stated that the 8th National Food and Nutrition Plan adopted the nine strategies summarized below, followed by specific targets and operational plans:

(i) To develop appropriate and adequate production, processing and distribution of foods for nutrition. Food supplementation will be developed, taking into consideration economical and social changes as well as mechanisms of marketing, for promotion and rectifying the nutrition situation in target population in consistency with nutrition related problems.

(ii) To propagate proper nutrition knowledge and food value taste among the general public and specific target population for a change towards best behaviour in food selection for consumption and creation of self-care on food and nutrition.

(iii) To establish standards and impose legal action for consumer protection on food and nutrition; and to extend knowledge and understanding on food and nutrition to consumers so that they are capable of proper food purchasing and eating.

(iv) To promote, protect and support breastfeeding and infant food supplementation.

(v) To eliminate malnutrition of pregnant women, preschool and school children.

(vi) To develop indicators for nutrition surveillance for family and community implementation; to develop nutrition surveillance for policy making and planning on nutrition.

(vii) To strengthen the role of family and community on food and nutrition surveillance, planning and assessment.

(viii) To strengthen knowledge on food and nutrition of personnel at all levels as well as those relevant to food and nutrition for efficiency in working and researching, to promote and coordinate research results among various organizations.

(ix) To transform food and nutrition plans into effective action; to develop organizations to coordinate, monitor and evaluate food and nutrition continuously at all levels.

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Fifty-sixth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights

Report of the High Commissioner for Human Rights

Introduction

1. At its fifty-second session, the Commission on Human Rights took note of the measures taken by the Committee on Economic, Social and Cultural Rights towards the elaboration of a draft optional protocol to the International Covenant on Economic, Social and Cultural Rights granting the right of individuals or groups to submit communications concerning non-compliance with the Covenant, as recommended by the World Conference on Human Rights, and requested the Committee to submit a report on the matter to its fifty-third session (resolution 1996/16, para. 10).

2. The Committee on Economic, Social and Cultural Rights continued and concluded its consideration of a draft optional protocol at its fifteenth session (E/C.12/1996/SR.44-49 and 54). The report of the Committee on Economic, Social and Cultural Rights on a draft optional protocol for the consideration of communications in relation to the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1997/105, annex) was submitted to and considered by the Commission on Human Rights at its fifty-third session in 1997.

3. Pursuant to requests by the Commission on Human Rights in decision 1997/104 and resolution 1998/33, comments were requested from Member States, States parties to the Covenant, intergovernmental organizations and non-governmental organizations. Comments received have been published in Commission on Human Rights documents E/CN.4/1998/84 and Add.1 (fifty-fourth session), and E/CN.4/1999/112 and Add.1 (fifty-fifth session).

4. On the basis of Commission on Human Rights decision 1997/104, comments have been received from the following States: Canada, Cyprus, Ecuador, Finland, Germany and the Syrian Arab Republic, Cyprus, Ecuador, Finland and the Syrian Arab Republic expressed support for the draft optional protocol. Comments were submitted by the following United Nations organs and intergovernmental organizations: Office of the Legal Counsel of the United Nations, and the Directorate of Human Rights of the Council of Europe. Both organizations expressed their support for the draft optional protocol. The following non-governmental organizations submitted comments: American Association of Jurists, International Commission of Jurists (Dutch section), International Commission of Jurists, International Organization for the Development of Freedom of Education and the International Council of Environmental Law. All the NGOs strongly endorsed the draft optional protocol (see E/CN.4/1998/84 and Add.1).

5. On the basis of Commission on Human Rights resolution 1998/33, comments have been received from the following States: Croatia, Cyprus, Finland, Germany, Mexico and Sweden. Croatia, Mexico and Germany expressed their support for the draft optional protocol. The following NGO, International Centre for Sociological, Penal and Penitentiary Research and Studies at Messina, Italy, submitted comments and expressed its support for the draft optional protocol (see E/CN.4/1999/112 and Add.1 and the present document).

6. In its resolution 1999/25, the Commission on Human Rights requested the High Commissioner to urge all States to submit their comments on the report of the Committee on Economic, Social and Cultural Rights to the Commission on a draft optional protocol for the consideration of communications in relation to the Covenant and, taking into account the comments received, to report to the Commission at its fifty-sixth session on options relating to the proposal for a draft optional protocol. Pursuant to this decision, a note verbale was sent by the Secretariat on 13 August 1999 to all Member States. By 10 December 1999, replies had been received from: Czech Republic, Georgia, Lebanon, Lithuania and the Syrian Arab Republic. The comments received in 1999 are contained in the present document. In addition, a submission was received from Germany pursuant to resolution 1998/33. Any additional replies will be reproduced in an addendum to this document.

I. COMMENTS RECEIVED

Czech Republic

[Original: English]
[7 December 1999]

Questions of terminology

7. The Czech Republic considers the reference to a "failure to ensure the satisfactory application of a provision of the Covenant" more appropriate than the phrase "violation ... of ... the rights set forth in the International Covenant" used in the Optional Protocol to the International Covenant on Civil and Political Rights. The different character of the rights contained in the International Covenant on Economic, Social and Cultural Rights is reflected in the way the State obligations are determined in both Covenants: while the International Covenant on Civil and Political Rights states in article 2, paragraph 1, that "each State party ... undertakes to respect and ensure ... the rights", article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights provides that "Each State party ... undertakes to take steps ... to the maximum of available resources, with a view to achieving progressively the full realization of the rights recognized ...". Therefore, the obligations that are laid down in different forms in each of the Covenants should be referred to in different wording in each optional protocol.

Individuals and/or groups as complainants

8. The Czech Republic would prefer that article 1 of an optional protocol contain a restrictive list of groups that may submit a communication to the Committee. A precise determination of the potential group of complainants is of great importance if an optional protocol is to allow third parties also to submit a communication on behalf of alleged victims. The Committee itself is of the opinion that such possibility should only "embrace individuals and groups who ... are acting with the knowledge and agreement of the alleged victim(s)" (E/CN.4/1997/105, annex, para. 23). In case any group is entitled to submit a communication as a victim of violation of its rights, and it is possible to submit a communication on behalf of such allegedly injured group, it may, in some cases, become difficult or even impossible to determine whether such "group victim" is aware of the communication and agrees with it.

Right to submit a communication - third parties acting on behalf of alleged victims

9. The Czech Republic suggests that the condition stating that a submission on behalf of an alleged victim is only allowed "with the knowledge and agreement of the alleged victim" be included explicitly in the text of an optional protocol instead of being left to the Committee's interpretation. The explicit provision will facilitate the elimination of abuses of the communication procedure by third parties.

Receivability and admissibility

10. The Czech Republic suggests that the closing sentence of the proposed article 3, paragraph 3 (b) be deleted. Admissibility of the claim when the procedure of investigation or settlement is unreasonably prolonged is in place when applied to exhaustion of domestic remedies, as is the case in article 5, paragraph 2 (b), of the Optional Protocol to the International Covenant on Civil and Political Rights. Its application to another parallel ongoing investigation or settlement at the international level would constitute an unacceptable clash of competencies and a violation of the commonly accepted legal principle ne bis in idem. Moreover, it is unlikely that the provision of the unreasonable prolongation of another international procedure would be used in practice for the same reasons as the Committee itself gives in its argumentation against inclusion of an inter-State complaint procedure in an optional protocol.

Georgia

[Original: English]
[25 October 1999]

11. The Government of Georgia considers that granting of individuals or groups the right to submit communications concerning non-compliance with the Covenant is a logical step since such communications procedures exist under United Nations human rights treaties and particularly the first Optional Protocol to the International Covenant on Civil and Political Rights.

12. The aspect that under an optional procedure the State party concerned retains the final decision as to what will be done in response to any views adopted by the Committee is acceptable for our State.

13. We consider that discussion on the inclusion of an inter-State complaints procedure within the proposed optional protocol should be continued. The International Covenant on Economic, Social and Cultural Rights is a document which involves mainly inter-State relationships, and such a procedure is included in the International Covenant on Civil and Political Rights.

14. We welcome the inclusion of an individual right to petition as essential and that the Committee had indicated a "strong and clear preference for an individual" focus (ibid., para. 19). The competence of the Committee to receive and examine communications from groups is also acceptable. As to third parties acting "on behalf of" alleged person, their inclusion we think demands more thorough consideration because there are examples of misuse of such a right.

15. Paragraph 1 of article 2 from our point of view should exclude the right to self-determination or precisely emphasize that the right to self-determination should be dealt with only if economic, social and cultural rights are involved. We fear that the inclusion of self-determination would pose a grave danger of the procedure being misused.

16. The proposed texts of articles 3, 4 and 5 are acceptable.

17. A six month time limit in the proposed text of article 6, paragraph 2, is acceptable. Of course, three months would be too short a time for Governments to respond.

18. In the proposed text of article 7, we consider that paragraph 1 would make it very difficult to examine the communications and opens the way to its misuse. We therefore consider it desirable to delete paragraph 1 of article 7.

19. The proposed texts of articles 8-17 are acceptable.

Germany

[Original: English]
[11 November 1998]

20. The Government of Germany believes that, as a matter of principle, the availability of individual complaints procedures is an apt way of strengthening the legal status of those involved, as well as their awareness of their rights, and of encouraging States parties to implement their obligations. In this context it is primarily the task of the States parties to guarantee national compliance with international law and with relevant national provisions, inter alia through an independent judiciary. International legal protection for individuals can be an important additional element. Despite their regrettable lack of resources and the limitations this entails, the existing international procedures for individual legal protection have proven their worth as vital components of international human rights protection.

21. If a complaint mechanism relating to economic, social and cultural rights is to function efficiently, it is essential that the precise context of the regulations and obligations emanating from these rights, as well as the entitlement to complain, be clarified. In Germany's view there are still deficits or uncertainties in this area which should be cleared up (cf. inter alia Germany's earlier position in document E/CN.4/1998/84). In this connection Germany is pleased to have witnessed some developments in the right direction, in particular the decision by the Commission on Human Rights at its fifty-fourth session to appoint a special rapporteur whose mandate will focus on the right to education (resolution 1998/33), as well as various approaches in the Committee on Economic, Social and Cultural Rights and in the academic world (including the panel of experts organized by the United Nations High Commissioner for Human Rights on 25 March 1998 at the beginning of the fifty-fourth session of the Commission on Human Rights). This conceptual work must be continued.

22. Germany looks forward with interest to further discussion of these issues in the relevant United Nations forums.

Lebanon

[Original: French]
[19 November 1999]

23. The Ministry proposes that the preamble should include a new paragraph reflecting and confirming the relationship between the realization of development and the realization of the other Covenant rights.

24. The protocol does not specify the identity of the individuals or groups who may lodge a complaint. In addition, the Ministry considers that this right should be strictly limited to the victims of violations or their legal representatives in order to simplify and clarify the Committee's work.

25. The Ministry agrees with the substance of article 3, but asks the following question: how is the Committee to establish clearly that all the procedural formalities have been complied with? In addition, paragraph 1 of article 3 should be drafted in such a way as to avert any duplication between the mechanisms provided for by the protocol.

26. As to draft article 7, the Ministry would have no objection to the Committee accepting information from different sources, i.e. sources other than the parties concerned by the complaint, provided that the parties are informed and the sources are not directly involved in the complaint in question. It is also necessary to specify the procedures which the Committee should comply with in order to check facts and allegations in the context of current discussions.

27. The Ministry endorses the explanation concerning article 8, in which it is stated that the Committee must not be transformed into a judicial body and that these procedures must remain in the context of recommendations. The Ministry accordingly considers that this approach should be spelled out in the provisions of this article.

Lithuania

[Original: English]
[3 November 1999]

28. The Government of Lithuania supports the draft optional protocol establishing an optional communications procedure for the International Covenant on Economic, Social and Cultural Rights.

29. Lithuania supports the Committee's recommendation that the protocol should refer to a "violation ... of ... the rights set forth in the International Covenant". Lithuania also supports the opinion that the right to submit communications should be granted to individuals as well as groups claiming to be a victim of a violation. However, we question the extension of the right to submit communications to "third parties" who merely have "sufficient interest" in the matter, as this potentially could cause an overflow of speculative complaints.

30. Lithuania supports the proposal of the Committee that all rights set forth in articles 1 to 15 could be covered by the procedure. However, it should be noted that the right to self-determination, provided for in article 1, should be dealt with under this protocol only insofar as economic, social and cultural rights are concerned.

Syrian Arab Republic

[Original: Arabic]
[22 October 1999]

31. In a letter received on 22 October 1999, the Permanent Mission of the Syrian Arab Republic to the United Nations Office at Geneva indicated that the issue is being considered, and that the Government would like to submit its comments on the draft optional protocol during the fifty-sixth session of the Commission on Human Rights.

II. OPTIONS REGARDING THE DRAFT OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

32. The comments received from States and intergovernmental and non-governmental organizations since 1997 give rise to the following options:

(a) Request for additional comments from States and other interested parties. In view of the limited number of replies received from States regarding the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights, one option may be for the Commission on Human Rights to decide that yet another request for comments should be made to States, United Nations organs, intergovernmental organizations and non-governmental organizations that have not yet submitted replies;

(b) Further study by an open-ended working group. The comments received, both positive and sceptical, encompass a wide range of views. A considerable number of suggestions and proposals have been made regarding the provisions of the draft optional protocol and further discussion of the text has been welcomed in various replies received from States. Therefore, one option might be for the Commission to decide that, in light of the nature of the views set forth in the comments received and of the suggestions and proposals regarding the draft, further consideration and study of the matter is required before any conclusions can be reached;

(c) Discussion and eventual adoption of the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights by the Commission. Of the 14 States which have replied, 11 are in support of the draft optional protocol and propose amendments to the formulation and substance of the draft. Three States have expressed their doubts about the draft optional protocol. One of them, however, seems to have changed its initial point of view to a more supportive one with respect to the consideration of a draft optional protocol. The United Nations bodies and intergovernmental organizations that have submitted comments have welcomed and expressed support for the elaboration of a draft optional protocol to the International Covenant on Economic, Social and Cultural Rights, and have made suggestions on the formulation and substance of the draft. The comments received from

non-governmental organizations, both in written form and in oral statements, support the draft optional protocol, and include remarks and suggestions on the formulation and substance of the draft. A workshop held in February 1999 on the draft optional protocol organized by the International Commission of Jurists under the auspices of and in cooperation with the Office of the High Commissioner for Human Rights, supported continuing work on the further elaboration of the optional protocol. A number of areas were identified which would need further clarification, such as the practical consequences and requirements of a new complaint mechanism in the United Nations human rights system, and the justiciability and violations of economic, social and cultural rights. A third option might therefore be for the Commission on Human Rights to decide that, on the basis of the report of the Committee on Economic, Social and Cultural Rights to the Commission and on the basis of the comments received, the draft optional protocol may be discussed with a view to its being adopted.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Report submitted by the Special Rapporteur on toxic waste,
Mrs. Fatma-Zohra Ouhachi-Vesely

CONTENTS

	Paragraphs	Page
Introduction	1 - 6	4
I. ACTIVITIES OF THE SPECIAL RAPPORTEUR	7 - 17	5
A. Missions	7	5
B. Workshop on gender integration	8 - 15	5
C. Sixth meeting of special rapporteurs	16	7
D. Difficulties encountered in fulfilment of the mandate	17	7

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CONTENTS (continued)

		Paragraphs	Page
II.	SUMMARY OF GENERAL COMMENTS SUBMITTED TO THE SPECIAL RAPPORTEUR	18 - 60	7
	A. Replies received from Governments	18 - 34	7
	1. Australia	19 - 21	7
	2. Georgia	22	8
	3. Japan	23 - 31	8
	4. Oman	32	10
	5. Portugal	33	10
	6. Thailand	34	10
	B. Information submitted by intergovernmental organizations	35 - 52	11
	1. United Nations Environment Programme/ Secretariat of the Basel Convention	35 - 50	11
	2. United Nations Interregional Crime and Justice Research Institute	51 - 52	14
	C. Information submitted by human rights organizations	53 - 55	14
	D. Information submitted by non-governmental organizations	56 - 60	15
III.	REVIEW OF CASES AND INCIDENTS SUBMITTED TO THE SPECIAL RAPPORTEUR	61 - 90	16
	A. Cambodia/Taiwan (Province of China)	61 - 71	16
	B. Panama/United States of America	72 - 88	18
	C. Paraguay/Delta Pine	89 - 90	22

CONTENTS (continued)

		Paragraphs	Page
IV.	FOLLOW-UP TO MISSIONS IN THE FIELD	91 - 115	24
	A. South Africa	91 - 92	24
	B. Brazil	93 - 103	24
	C. Costa Rica	104 - 106	26
	D. Paraguay	107 - 115	27
V.	CONCLUSIONS AND RECOMMENDATIONS	116 - 120	29

Introduction

1. In 1995, at its fifty-first session, the Commission on Human Rights adopted its first resolution specifically concerning the "adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights" (resolution 1995/81). In that resolution, the Commission decided to appoint a Special Rapporteur for a period of three years with a mandate to investigate the question of toxic waste and to draw up a report each year on the alarming practice of dumping toxic and dangerous waste. Pursuant to that resolution, Mrs. Fatma-Zohra Ksentini (at present Mrs. Ouhachi-Vesely) (Algeria) was appointed Special Rapporteur.

2. In her preliminary report (E/CN.4/1996/17), the Special Rapporteur gave an overview of questions related to the illicit dumping of toxic products and analysed the legal framework and international standards relevant to the exercise of her mandate.

3. Each year subsequently the Commission approved a resolution on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (1996/14, 1997/9 and 1998/12). Pursuant to those resolutions, the Special Rapporteur has each year submitted a progress report giving the results of the "global, multidisciplinary and comprehensive study of existing problems of and solutions to illicit traffic in, transfer and dumping of toxic and dangerous products and wastes" requested by the Commission, and summarizing the general comments received from Governments and from intergovernmental and non-governmental organizations, as well as the real cases and incidents involving the movement and dumping of toxic products (E/CN.4/1997/19, E/CN.4/1998/10 and Add.1 and E/CN.4/1999/46).

4. In order to become acquainted with practical experience and problems arising in the field, the Special Rapporteur also carried out missions to Africa and South America: in 1997, she visited South Africa, Kenya and Ethiopia (see E/CN.4/1998/10/Add.2) and in 1998 Paraguay, Brazil, Costa Rica and Mexico (see E/CN.4/1999/46/Add.1).

5. In 1998, at its fifty-fourth session, the Commission on Human Rights, by its resolution 1998/12, decided to renew the mandate of the Special Rapporteur for a period of three years. On 26 April 1999, the Commission adopted resolution 1999/23, under the terms of which Mrs. Fatma-Zohra Ouhachi-Vesely submits this progress report.

6. In its general layout, the report is similar to previous progress reports. The first four chapters cover the activities of the Special Rapporteur in 1999 (chapter I), the general information submitted by Governments and by intergovernmental and non-governmental organizations (chapter II), the review of cases of illicit movement and dumping of toxic waste and products submitted to the Special Rapporteur (chapter III) and the follow-up to field missions undertaken by the Special Rapporteur (chapter IV). In the last chapter, devoted to conclusions and recommendations (chapter V), the Special Rapporteur, after confirming the validity of the recommendations contained in her earlier reports, draws conclusions concerning the most alarming cases to emerge in recent years.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Missions

7. Following her missions to Africa (1997) and Latin America (1998), the Special Rapporteur decided to visit Germany and the Netherlands in 1999, the first group in the European region to respond favourably to her request for a visit. The report on her mission to those two countries appears in the addendum to this report (E/CN.4/2000/50/Add.1). In the course of the year 2000, the Special Rapporteur intends to visit the Asia-Pacific region and possibly North America. She has already established contacts with Governments, which are considering her requests for a visit. Some of them have already supplied documentation, which can undoubtedly help with preparations for the missions, but can in no way replace the latter.

B. Workshop on gender integration into the human rights system

8. From 26 to 28 May 1999, in Geneva, the Special Rapporteur took part in a workshop on gender integration into the human rights system jointly convened by the Office of the United Nations High Commissioner for Human Rights, the Division for the Advancement of Women and the United Nations Development Fund for Women. She explained on that occasion how she tried to introduce a gender perspective in her reports, in the belief that women as a group are particularly exposed to the adverse effects of the use of toxic products and dangerous waste on the right to life, the right to health, the right to an adequate living standard, the right to development, the right to work, the right to participation, the right to freedom of expression and assembly, the right to information and other fundamental rights.

9. She recalled that chapter IV of her final report on human rights and the environment, submitted in 1994 to the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1994/9), dealt with the degradation of the environment and its impact on vulnerable groups, with a section devoted particularly to women. The report drew attention to the considerable attention devoted by Agenda 21 to women's participation in sustainable and equitable development and to the recognition in the Declaration of Rio that "women have a vital role to play in environmental management and development. Their full participation is therefore essential to achieve sustainable development". The Special Rapporteur felt that it would be useful to share with other participants her experience with introducing a gender perspective in her analysis of matters concerning toxic waste. She mentioned the problems which arose in establishing a link between the harm to women's health caused by the use of dangerous chemical products such as pesticides and claims for compensation from companies which marketed such products.

10. In her 1994 report, the Special Rapporteur had noted a disturbing discrepancy between recognition of the decisive role played by women in promoting sustainable development and the place they occupied in practice. Women's organizations throughout the world have clearly played a leading role in promoting environmental awareness, while women play a critical role in the management, use and protection of natural resources and in environmental education.

11. Even if, because of their traditional knowledge, skills and experience, women are no longer regarded as the originators or the victims of environmental degradation, but as actors who possess essential assets for its preservation, it is still true that in practice they are the first to

suffer from the risks and harmful effects of such degradation and among the last to enjoy access to available remedies (penalized by thankless tasks, unhealthy jobs, low participation at all levels, including in trade unions, politics, public affairs and decision-making; low educational standards leading to ignorance of rights or inability to take advantage of remedies; discrimination in law or in practice, etc.).

12. While the Special Rapporteur has not yet reached any final general conclusions regarding her mandate, she is already sure that women and children are not spared the adverse effects of the illicit movement of toxic products and dangerous waste, even though they remain to a certain extent less exposed than men. It should be pointed out that it is often impossible to obtain details of the age and sex of victims. Moreover, owing to the very fact that women in a particular field that employs more male labour appear less exposed, they do run another risk, which is that of being deliberately ignored whenever they are directly or indirectly affected, in their physical and mental health or in that of their children and families, in their private lives and in their living conditions.

13. A revealing case is that of women workers on the banana plantations of the American firms United Fruit Company and Standard Fruit Company in Costa Rica, who were affected by the use of dibromochloropropane (DBCP). While the complaints of workers sterilized due to the use of this highly toxic nematicide were considered valid, the women and children suffering from various disorders because they were exposed to the product when they brought meals to the workers have still been excluded from compensation. The firms concerned maintain that no causal link has yet been established in their case. In her previous report (E/CN.4/1999/46/Add.1, paras. 56-62), the Special Rapporteur had informed the Commission on Human Rights of the request for technical assistance by the Defensoria de los Habitantes de Costa Rica (Ombudsman), in the form of expertise in particular, in order to support the claims of victims excluded from the compensation process. Moreover, the psychological impact and moral effects on families, including women, of the irremediable sterilization of thousands of workers appear to have been withheld from public view.

14. At the workshop, the Special Rapporteur also pointed out that it was important for the successful implementation of special rapporteurs' mandates that cooperation links should be strengthened between the different United Nations bodies dealing with women's problems. That would make it easier for special rapporteurs, when planning field visits, to obtain accurate data on the status of women in the country they would be visiting. They could also, if necessary, have access to the statistical data and studies produced by the Division for the Advancement of Women and UNIFEM (United Nations Development Fund for Women).

15. In addition, special rapporteurs are often asked to help with the provision of technical assistance for the implementation of specific projects. It would be useful to see to what extent projects such as those concerning women's training or the launch of private projects encouraging women's participation could be undertaken on a joint basis by the Office of the High Commissioner for Human Rights, the Division for the Advancement of Women, UNIFEM and other bodies, with the assistance of special rapporteurs.

C. Sixth meeting of special rapporteurs

16. From 31 May to 3 June 1999, the Special Rapporteur took part in the sixth meeting of special rapporteurs, representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights. The Special Rapporteur hopes that the efforts of the Office of the High Commissioner for Human Rights to strengthen the special procedures and allocate human and material resources to them will be successful. She particularly hopes that the data bank on special procedures will become effective in the near future in order to facilitate the processing of allegations received, the follow-up of recommendations by special rapporteurs, and the exchange of information between country rapporteurs and thematic rapporteurs, as well as with treaty bodies.

D. Difficulties encountered in fulfilment of the mandate

17. Owing to a shortage of financial resources at the end of 1999, the Office of the High Commissioner was unable to finance the Special Rapporteur's visit to Geneva, where she had intended to finalize her report. Submission of the report was delayed as a result. The Commission on Human Rights should secure the allocation of sufficient annual resources to ensure completion of the Special Rapporteur's activities.

II. SUMMARY OF GENERAL COMMENTS SUBMITTED TO THE SPECIAL RAPPORTEUR

A. Replies received from Governments

18. The Special Rapporteur received information from the following Governments: Australia, Brazil, Costa Rica, Georgia, Indonesia, Japan, Oman, Paraguay, Portugal, South Africa and Thailand. Some of this information is analysed in the sections in chapters below. As the communications from South Africa, Brazil, Costa Rica and Paraguay related to the Special Rapporteur's missions to those countries, they appear in chapter IV dealing with the follow-up to field missions.

1. Australia

19. The Government of Australia stated that the import and export of hazardous wastes was regulated in Australia by the Hazardous Wastes (Regulation of Exports and Imports) Act, which had been amended in 1996 to ensure that it was fully consistent with the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The Hazardous Waste Section of the Department named "Environment Australia" is the competent authority to monitor the implementation of the legislation. Under this Act, "exports for final disposal are only permitted under exceptional circumstances, such as the existence of a significant risk of injury or damage to human beings or the environment or if the waste is needed for research or testing. Import permits may be granted for wastes which are destined for final disposal in accordance with State and Territory requirement, but such permits have been issued only for Australian-owned waste or household waste from Antarctic bases".

20. Regarding the prohibition of export of hazardous wastes from countries listed in Annex VII (member countries of the OECD, the European Community and Liechtenstein) to all

other countries, the Government of Australia has expressed a clear view that countries should be able to move both on and off Annex VII on the basis of their ability to manage waste in an environmentally sound manner. The Government also considers it important that article 11 of the Basel Convention (which enables Parties to enter into bilateral, multilateral or regional agreements or arrangements with other Parties or with non-Parties) should continue to be available between Annex VII and non-Annex VII countries irrespective of whether the ban amendment enters into force or not.

21. According to the Australian authorities, no hazardous wastes have been recently exported to developing countries. The Study Related to Annex VII of the Basel Convention commissioned by the secretariat of this treaty confirms this statement. Export of lead waste and scrap from used batteries to Asian countries has been stopped since 1995. The last exports of copper ashes and residues registered are dated 1994 and 1995; they were sent to South Africa for recovery.

2. Georgia

22. The Government of Georgia indicated that article 2 of the Law on Transit and Import of Hazardous Waste on the Territory of Georgia restricts the transit and import of any kind of waste on the entire territory of Georgia, including territorial waters, air space, continental shelves and economically mostly important zones. No case of violation of this legal provision has been registered.

3. Japan

23. The Government of Japan informed the Special Rapporteur that Japan had concluded the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (hereafter called the Basel Convention) in September 1993 and also accepted the OECD Council Decision on the Control of Transboundary Movements of Wastes to be Collected in December 1993. Accordingly, when the Basel Convention took effect for Japan on 16 December 1993, the Law for Control of Export, Import and Others of Specified Hazardous Wastes and Other Wastes (hereafter called the Domestic Law for the Basel Convention) was implemented and the Waste Management Law was amended at the same time.

24. Control of export and import of (hazardous) wastes is provided for by the Domestic Law for the Basel Convention and the Waste Management Law. The Domestic Law for the Basel Convention provides that permission according to the Foreign Exchange and Foreign Trade Control Law is required prior to export and import of waste which is hazardous in light of the Basel Convention, while the Wastes Management Law provides for control on export of waste material, which are of value regardless of whether they are hazardous or not, based on the principle of management within Japan.

Control by the Waste Management Law

25. The Waste Management Law makes it a principle that (non-valuable) waste materials generated within Japan are to be appropriately managed within Japan (art. 2.2). It also requires

Minister of Health and Welfare's acknowledgement prior to export of waste materials (arts. 9.6 and 15.4.5). In conformity with the principle of management within Japan, the Minister of Health and Welfare has not acknowledged any export hitherto.

Control under the Domestic Law for the Basel Convention

26. The Domestic Law for the Basel Convention defines the materials recognized as "specified hazardous wastes" to be controlled and requires the following process in export and import of the specified hazardous wastes:

(i) Application by the person who wishes to export a specified hazardous waste for permission from the Minister for International Trade and Industry (MITI);

(ii) Transfer of the application document to the Director General of the Environment Agency;

(iii) Sending of prior notification to the countries of import and transit from the Environment Agency;

(iv) Examination by the Environment Agency whether sufficient measures will be taken for preventing environmental pollution upon receipt of the agreement from the countries of import and transit (this examination is unnecessary for export to the OECD countries with the objective of recycling) and notification to the MITI of the result of this examination;

(v) Permission for export by the MITI;

(vi) Issue of the export movement document by the MITI to the person who has export permission (issue of the document is necessary for each export when the permitted waste is exported on several separate occasions).

Waste management in foreign countries

27. As stated above, wastes generated within Japan are, in principle, to be managed in Japan and there has been no example of waste management in foreign countries.

Situation with regard to the export and import of specified hazardous wastes

28. The countries to which Japan has exported hazardous wastes are Germany, Belgium and the Republic of Korea, all of which are OECD countries. All the exports are for recycling and recovery of such metals as copper, lead and tin, and there is no export with the objective of final disposal.

Environmental crime in Japan

29. There were 2,371 cases of waste management crime in 1998, 71.8 per cent of which involved illegal waste dumping. Cases concerning industrial waste amounted to 1,120 cases -

208 cases more than the previous year's record. The National Police Agency of Japan established the Consultative Meeting for the Prevention of Illegal Industrial Waste Management with relevant institutions and bodies and keeps in close contact with them in order to prevent inappropriate management and illegal dumping of industrial wastes and to tackle them promptly and appropriately.

30. There were 404 cases of illegal ocean dumping of wastes found by the Maritime Safety Agency in 1998. They were referred to as cases against the Waste Management Law. The Japanese Maritime Safety Agency tackles these cases appropriately in liaison with patrol boats and aircraft and it keeps close connection with concerned institutions and bodies in order to strengthen the prevention of illegal waste dumping.

Illegal transboundary movement of hazardous wastes

31. There have been no reports of cases of the illegal transboundary movement of hazardous wastes in Japan since the enforcement of the Domestic Law for the Basel Convention.

4. Oman

32. The Government of Oman provided the Special Rapporteur with a copy of Ministerial Decision No. 18/93, issued by the Ministry of Regional Municipalities and Environment on 2 February 1993, concerning the Regulations for the Management of Hazardous Waste. Article 15 of this text provides that no hazardous wastes whatsoever shall be imported into or exported from the Sultanate [of Oman] without permit from the Minister. This permit shall be issued after seeking the approval of the concerned government agencies according to the Law on Conservation of the Environment and Protection from Pollution.

5. Portugal

33. The Portuguese Government informed the Special Rapporteur that Decree-Law No. 239/97 had been adopted to regulate the management of dangerous wastes in conformity with regional instruments (EEC Regulation No. 259/93 on the supervision and control of shipments of wastes within, into and out of the European Community) and with international instruments (Basel Convention and Lomé Convention). Under that Decree-Law, the Waste Institute is responsible for supervising the cross-border movement of waste. In conformity with Portuguese legislation, no illicit movement of waste occurred to developing countries.

6. Thailand

34. The Government of Thailand informed the Special Rapporteur that in the past Thailand may have experienced an incident of the disposal of chemical residues left by the fire at Klong Toey Port in Bangkok in 1991. However, according to the Ministry of Science, Technology and Environment, since Thailand became a member of the Basel Convention, on 22 February 1992, it has undertaken the strictest measures to control the importation and exportation of toxic and dangerous products and wastes. The Government of Thailand stated that at present no adverse effects of illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights were to be found on its territory.

B. Information submitted by intergovernmental organizations

1. United Nations Environment Programme/Secretariat of the Basel Convention

35. UNEP and the Secretariat of the Basel Convention have informed the Special Rapporteur of their recent activities relating to the regulation of trade in persistent organic pollutants and the control of the transboundary movement of dangerous waste. On the basis of the documents transmitted to her, the Special Rapporteur has made the analysis which is contained in the following paragraphs.

(a) The prior informed consent (PIC) procedure in the case of hazardous chemicals in international trade

36. Every year, pesticides and other toxic chemicals cause serious poisoning and kill thousands of people. Many of these substances, moreover, have devastating effects on the environment, polluting water resources and causing poisoning in animals, plants and even humans. Stocks of disused pesticides and toxic chemicals accumulate in almost all developing countries. They are mostly persistent organic pollutants, extremely toxic chemicals whose lifespan in nature is very long, which accumulate in the organism and which are moreover extremely mobile; this means that they are sometimes found thousands of miles from the point at which they were released.

37. The growth of world trade in chemicals during the 1960s and 1970s aroused increasing concern about the risks posed by the use of hazardous chemical substances. This concern led, in particular, to the preparation, in 1985, by the Food and Agriculture Organization of the United Nations (FAO), of the International Code of Conduct on the Distribution and Use of Pesticides and, in 1987, by the United Nations Environment Programme, of the London Guidelines for the Exchange of Information on Chemicals in International Trade.

38. In 1989, the so-called prior informed consent (PIC) procedure was instituted, with the aim of regulating the importation of hazardous chemical substances which are banned or severely restricted. On 10 September 1998, the Conference of Plenipotentiaries adopted the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (see paras. 44-48 below).

(i) The purposes of the PIC procedure

39. The PIC procedure is operated jointly by FAO and UNEP, in the context of the Joint FAO/UNEP Programme on Implementation of the PIC procedure; the Plant Production and Protection Division of FAO is the lead agency for pesticides, and UNEP, through the International Register of Potentially Toxic Chemicals (IRPTC), is lead agency for other chemicals.

40. The PIC procedure gives importing countries clearer information on the characteristics of any potentially hazardous chemicals that might be shipped to them, and enables them to decide for themselves on future imports of such chemicals and to inform other countries of that

decision. The aim is to encourage exporting countries and importing countries to jointly assume responsibility for protecting human health and the environment against the harmful effects of certain hazardous chemical substances in international trade.

41. In addition, the PIC procedure provides basic information and indicates how to obtain other useful information for the purpose of taking decisions, in the field of health and the environment, concerning the future use of the identified chemicals. In this respect, until the adoption of the Rotterdam Convention, what was involved was essentially an information exchange system.

(ii) Operation of the existing PIC procedure

42. The existing optional procedure has been administered by UNEP and FAO since 1989 on the basis of the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade and the Code of Conduct on the Distribution and Use of Pesticides. In order to perfect the new PIC procedure instituted by the Convention, full account has been taken of the experience gained with the operation of the original procedure.

43. The Rotterdam Convention will enter into force when it has been ratified by 50 countries. Governments have agreed to continue to operate the optional PIC procedure following the new provisions established by the Convention, until such time as the Convention has officially entered into force; this constitutes an innovation in the area of multilateral environmental agreements. This arrangement, which betokens the importance which Governments attach to the Convention, will avoid a hiatus in the operation of the procedure.

(iii) The Rotterdam Convention on the Prior Informed Consent Procedure

44. The Rotterdam Convention on the Prior Informed Consent Procedure applicable in the case of certain hazardous chemicals and pesticides in international trade was adopted by the Conference of Plenipotentiaries on 10 September 1998. It was opened for signature on 11 September 1998 and was signed by 62 Governments during the Conference; the final act was signed by 80 Governments. According to UNEP and FAO, the Convention represents an important step forward in the protection of the environment and citizens of all countries, in particular the developing countries, against the risks inherent in trade in pesticides and chemicals which are extremely hazardous for life and the environment. The Convention sets standards which will enable trade in hazardous chemicals to be controlled. Importing countries have the right to refuse to import products which they would be unable to control with complete safety. Obligations relating to labelling and communication of information on risks to health and the environment will furthermore enable imported chemicals to be used in greater safety.

45. The Convention covers pesticides and industrial chemicals which are banned or severely restricted on the territory of the parties for reasons relating to the protection of health or the environment, and for which the parties have issued a notification for the purposes of operation of the PIC procedure. Severely hazardous pesticide formulations which pose a danger to developing country parties or transition country parties owing to the conditions in which they are used in these countries may also be the subject of a request for coverage by the PIC procedure. It is the Conference of the Parties which decides which chemicals will be subject to the

procedure. Initially, the Convention will apply to a minimum of 27 chemicals (pesticides and industrial chemicals), which are those currently covered by the optional PIC procedure. Once the Convention enters into force, hundreds of other products will undoubtedly be added to the list over the years. Certain particular groups of chemicals, such as narcotic drugs and psychotrophic substances, radioactive materials, wastes, chemical weapons, pharmaceuticals, food and food additives, are excluded from the scope of the Convention. Also excluded are chemicals imported in quantities not likely to affect human health or the environment, provided they are imported for the purpose of research or analysis or by an individual for his or her personal use in quantities reasonable for such use.

46. The Convention also provides for the exchange of information between the parties on exported and imported potentially hazardous chemicals, and also a national decision-making procedure concerning imports and compliance by exporters with the decisions taken. The provisions relating to this exchange of information are the following:

(a) When a chemical is banned or severely restricted on their territory, the parties must notify the other parties accordingly;

(b) Parties which are developing countries or countries in transition have the possibility of notifying the other parties that a particular severely hazardous pesticide formulation poses problems because of the conditions in which it is used on their territory;

(c) Any party intending to export a chemical whose use is banned or severely restricted on its territory must notify the importing party of the intended export shipment, prior to the first delivery, and then every year thereafter;

(d) In the case of the export of chemicals that are to be used for occupational purposes, each exporting party must require that a safety data sheet that follows an internationally recognized format, setting out the most up-to-date information available, is sent to the importer;

(e) A label comprising all necessary information concerning risks and hazards to human health or the environment must be affixed, at the time of export, to the packaging of chemicals covered by the PIC procedure and of chemicals which are banned or severely restricted in the territory of the exporting party.

47. The decisions taken by the importing party must not adversely affect free competition; in other words, when a party decides not to consent to the import of a particular chemical, it must also ban its production on its territory for purposes of domestic consumption, and ban importation from non-parties.

48. The Convention also provides for technical assistance. In order that the Convention may be effectively implemented, the parties, taking into account in particular the needs of developing countries and countries in transition, will cooperate in promoting technical assistance for the development of the infrastructure and capacity necessary to manage chemicals. Parties with

more advanced programmes for regulating chemicals should provide technical assistance, including training, to other parties in developing their infrastructure and capacity to manage chemicals throughout their life-cycle.

(b) The Fifth Conference of States Parties to the Basel Convention

49. The Fifth Meeting of the Conference of the Parties to the Basel Convention was held in Basel (Switzerland) from 6 to 10 December 1999. This Conference, which coincided with the celebration of the tenth anniversary of the Convention, included as an important item on its agenda the adoption of the Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal. The Protocol was adopted by the States parties on 10 November. A special fund was also established for damage not covered by the provisions of this treaty.

50. The purpose of the Protocol is to provide for a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes, and their disposal, including illegal traffic in those wastes (art. 1). However, it shall not apply to damage that has arisen from a transboundary movement of hazardous wastes and other wastes that has commenced before the entry into force of the Protocol for the contracting Party concerned (art. 3, para. 3a).

2. United Nations Interregional Crime and Justice Research Institute

51. The United Nations Interregional Crime and Justice Research Institute (UNICRI) informed the Special Rapporteur that it has launched a research project on organized and transnational crime, as well as the involvement of organized crime in crimes against the environment. This project will cover crimes relating to illegal trafficking in toxic waste, nuclear waste and material, illegal production and trafficking of ozone depleting substances (ODS), and lastly, the illegal trade in CITES-listed endangered species and products thereof. The project uses a broad definition of "criminal organizations" as two or more individuals working together in a premediated manner to achieve illicit financial gains.

52. Several entities within the United Nations, intergovernmental organizations, enforcement agencies and non-governmental organizations have expressed their deep concern over the emerging data suggesting that criminal organizations are increasingly committing crimes against the environment. The trend towards banning particular types of trade increases the need to ensure credible enforcement at both international and national levels. At the same time, prohibition historically has provided criminal organizations with new markets. A discrepancy between global intentions stated in international conventions and credible enforcement is therefore preparing the ground for illicit profits and black markets.

C. Information submitted by human rights organizations

53. The Working Group on Arbitrary Detention has informed the Special Rapporteur of the case of Mr. Grigorii Pasko, a 38-year-old commander in the Russian navy, who has been imprisoned since November 1997 by the Russian military authorities in the city of Vladivostok, having been charged with spying and high treason for disclosing State secrets. Mr. Pasko, who

is also a correspondent for the Russian Pacific fleet newspaper (Boyevaya Vakhita) in Vladivostok, has for several years been writing about the continuing breakage for recycling of old nuclear submarines, and the failure of the Russian authorities to process radioactive waste material resulting from the breakage of these submarines. Despite resistance, all articles published on these issues were approved by the editor-in-chief of the newspaper, as required. In addition, Mr. Pasko has worked for Japanese media, including the newspaper Asahi and the NHK television station. Allegedly the radioactive waste was dumped in the Pacific Ocean by the Russian navy; in 1993, he filmed a Russian navy tanker dumping radioactive waste in the Sea of Japan. This film, *Extra-Dangerous Zone*, was later shown by the Japanese television station NHK and by a television station in Prmorsky Krai, in eastern Russia.

54. After considering this case, the Working Group rendered the following opinion on 20 May 1999:

> "The deprivation of liberty of Grigorii Pasko was arbitrary, as being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14, and 19 of the International Covenant on Civil and Political Rights ..."

Consequent upon the opinion rendered, the Working Group requested the Government to take the necessary measures to remedy the situation, ensuring that the articles of the Penal Code relating to national security were applied with due regard for the guarantees of freedom of expression laid down by international standards and by the Russian Constitution and laws.

55. On 20 July 1999, Grigorii Pasko was released by the Russian Pacific fleet military court in Vladivostok after it found that the prosecution lacked evidence to support the charges against him of espionage and revealing State secrets. The court also noted irregularities committed during the investigation and gathering of evidence. Yet, instead of acquitting him, the court found Mr. Pasko guilty of "abuse of office" under article 285, part 1, of the Russian Penal Code and sentenced him to the maximum term of three years' imprisonment. Noting that this "abuse of office" had been facilitated by the negligence of the Pacific fleet officials, the court then immediately relieved Mr. Pasko of the obligation to serve the sentence, under a provision of a recently-adopted amnesty law for prisoners and detainees.

D. Information submitted by non-governmental organizations

56. The Special Rapporteur received information from Greenpeace International and the World Wide Fund for Nature (WWF) on the adverse effects of persistent organic pollutants (POPs) on fauna and flora. The video cassette submitted by Greenpeace shows how the health of indigenous populations in several countries is affected by the presence of such pollutants in animals, fish and plants, on which those peoples' diet is based. Both unborn children and women's milk are affected and the reproductive capacities of men are reduced owing to the presence of dangerous chemical products in their food.

57. The Special Rapporteur was invited to a conference on POPs, organized in September 1999 in Geneva by the Commonwealth Environmental Health Project and the International Joint Commission. The conference was intended to be educational in nature and to discuss the emerging scientific evidence of the impact of POPs on human health, with reference

also to wildlife and laboratory research. Although the Special Rapporteur did not attend the conference, she took note of information extracted from recent studies demonstrating the adverse effects of persistent pollutants on health.

58. Because these POP chemicals persist, bioaccumulate, and are easily transportable (semi-volatile) they are a global concern. All POPs possess a demonstrated capacity to affect human health, and the evidence with respect to the number of health outcomes continues to grow. The conference placed a special emphasis on the endocrine-disrupting impacts of POPs and on the broader emerging concept of POPs as "signal disrupters" that affect systems other than the endocrine system. Endocrine or signal disrupters can trigger a cascade of events in the developing foetus or the young child that can affect its neurological and immune systems. This damage may not appear for decades. The United Nations has responded by convening negotiations to produce a global, legally binding treaty banning or severely restricting these chemicals.

59. The Centre Europe-Tiers Monde (CETIM) sent the Special Rapporteur some documentation on the role of transnationals, globalization, trade liberalization and their effects on human rights. The Special Rapporteur's attention was drawn to a report by the Multinational Resource Centre (an American non-governmental organization), according to which the World Bank and the International Finance Corporation were encouraging the incineration of medical waste through more than 30 projects in some 20 countries.

60. This method of disposing of waste has been increasingly relinquished by industrialized countries. Medical waste incinerators give off not only dioxine, one of the most highly toxic cancerous pollutants, but also mercury, which is harmful to health because it affects the nervous system, the brain, the kidneys and the lungs.

III. REVIEW OF CASES AND INCIDENTS SUBMITTED TO THE SPECIAL RAPPORTEUR

A. Cambodia/Taiwan (Province of China)

1. The facts

61. According to information received, on 21 December 1998, 1,000 people protested against the dumping of 3,000 tonnes of toxic waste in Sihanoukville. Allegedly, the industrial waste, which contains hazardous materials such as lead, zinc and mercury, was exported by Formosa Plastics, a Taiwanese petrochemical firm. The death of at least two local residents and five cases of dizziness appeared to be connected to their involvement in movement of the waste. Nearly 50,000 residents had fled their homes in fear of the effects of the waste on their health and 3 people were killed and 14 injured in car crashes while fleeing. Moreover, two persons, Kim Sen and Meas Minear, were allegedly arrested for protesting against the dumping of toxic waste.

2. Reply by the Cambodian Government

62. On 30 November 1998, approximately 3,000 tonnes of wastes made up of old products of battery production were dumped at a site approximately 5 km from Sihanoukville. Owing to the

reaction to the illegal hazardous waste disposal on the part of the Government and the people who live in Sihanoukville, an agreement between Formosa Plastics Corporation and the Commission for Negotiation of Cambodia was signed to deal with the disposal of this waste. This agreement focused mainly on waste repacking, site clean-up and transportation of the waste outside Cambodia. Based on this agreement, repacking started on 9 March and finished on 31 March 1999. The total weight was 4,488,014 tonnes (including topsoil). The repacked waste was transported out of Cambodia on 2 April 1999.

63. In the case of two local residents' deaths and five cases of dizziness (as mentioned in the communication from the Special Rapporteur), the Government found no evidence proving the allegations. It is a fact, however, that nearly 50,000 residents had fled their homes.

64. Results of analyses showed that the hazardous waste did not damage the environment. The Ministry of Environment will continue to monitor the dumping site through analysis of soil, groundwater and surface water samples from the area.

The mission report: Investigation into suspected mercury contamination at Sihanoukville

65. The mission report was concluded in January 1999. The investigation was carried out by the National Institute for Minamata Disease of Japan at the request of the World Health Organization Regional Office for the Western Pacific. The main purpose of the investigation was to make preliminary recommendations for avoiding possible risks to the environment, the population in Sihanoukville and workers at the site; to carry out analyses of the waste samples for contamination with mercury and some other metals; to carry out analyses of the water samples for mercury contamination; and to carry out a health assessment of the port workers and soldiers (who cleaned the site) to ascertain whether they were suffering from mercury poisoning.

66. The report mentioned that 200 workers were involved in the transportation and unloading of the cargo and, "according to the Director of Health in Sihanoukville 10 patients were admitted to the provincial hospital with symptoms of poisoning and one has died. The main symptoms were vomiting, diarrhoea and dyspnoea. The patients were all among the workers who transported the waste or local people who took part in the looting of the plastic bags [containing the waste]".

67. However, based on interviews of port and site workers (who complained of health problems), and from analyses of blood, urine and hair samples, the investigators were not able to determine the causes of the health condition of the workers. They stated that the patients' symptoms (dizziness, visual trouble, headache and weakness) were "caused by the severe physical work in the dusty and hot environment [of the port and the dumping site]".

Agreement between Formosa Plastics Corporation and the Commission for Negotiation of Cambodia

68. This agreement provides, inter alia, that "[Formosa Plastics Corporation] agrees to be responsible for any Cambodian resident who made a claim to the [Commission for Negotiation of Cambodia] claiming that he or she suffered poisoning from hazardous substances coming from the wastes after a joint diagnosis for such Cambodian resident has been conducted by a

physician appointed by [Formosa Plastics Corporation] together with a physician appointed by [Commission for Negotiation of Cambodia] confirming that such Cambodian resident has indeed suffered poisoning from hazardous substances coming from the wastes" (art. 10).

3. Absence of reply from the Government of Taiwan (province of China)

69. No reply received.

4. Comment by the Special Rapporteur

70. The Special Rapporteur would like to suggest that the Government continue to monitor the health condition of the port and site workers and the residents, so as to detect any illness that may appear in the future and might be linked to poisoning by a hazardous substance coming from the wastes. The Special Rapporteur would wish to be informed of any legal action taken against the company responsible for the dumping of this waste and of the settlement of any claims on the basis of the agreement of 25 February 1999.

71. The Special Rapporteur is pleased to note that the two human rights defenders arrested in connection with this case (Kim Sen and Meas Minear) have been released and all charges against them dropped.

B. Panama/United States of America

1. The facts

72. Concern has been expressed about the withdrawal of the United States armed forces from the Panama Canal. The concern is based on the fact that the United States army is not clearing the zone of military waste such as mines, toxic gas and arms (residues) which could cause health problems for the local population. According to the source, research has confirmed that some 7,000 of the 17,000 hectares occupied by the military have been identified as high-risk areas. Until now, the United States authorities have shown reluctance to clean up the contaminated sites, as stipulated in the 1977 treaties, claiming that no appropriate method exists to do so. Furthermore, it has been reported that live munitions on the shores of the Canal have caused the death of 12 people in the last 18 years.

2. Reply by the Government of the United States of America

73. The attention of the Government of the United States has been drawn to certain allegations received by the Special Rapporteur whereby the United States is not clearing the Panama Canal Zone of military waste (such as mines, toxic gas and arms residues), which could cause health problems for the Panamanian population. According to other allegations, the United States has shown reluctance to clean up the contaminated sites, as stipulated in the 1977 Panama Canal Treaty, claiming that no appropriate method exists for doing so. The two types of contaminants are reportedly toxic waste and unexploded ordinance.

Toxic Waste

74. The information below is taken from United States Government records of all instances of toxic waste use in the Panama Canal Zone. A 1977 Department of Defense study found that the only chemical-related munitions fired on the ranges in the Canal Zone contained smoke-producing agents, such as tear gas. These chemicals degrade quickly and do not pose a significant threat to the environment. In 1965, tear gas grenades, containing a chemical that is not harmful to the environment, were tested in the Canal Zone. Additionally, since 1980, United States military personnel in the Canal Zone have been trained in gas mask use by being exposed to chemicals that simulate chemical agents. These agents are also not harmful to the environment since Department of Defense policy requires the use of non-toxic chemical stimulants in these cases.

75. From 29 September 1993 until 28 December 1993, 70 projectiles containing depleted uranium were brought to Panama to test for environmental exposure to the humid tropical climate. These projectiles were then returned to the United States and later fired at the Aberdeen Proving Ground, Maryland, in 1994. There were no radiation leaks during the testing period and the depleted uranium contained in the projectiles was never directly exposed to the environment.

76. The United States Military has not abandoned any mines, chemical or biological weapons in the former Canal Zone. Further, the Panama Canal Commission, which was given use rights over much of this area in connection with its treaty responsibility to manage, operate and maintain the Canal for the United States, has not received any formal complaints of toxic waste in or around the Canal Zone. Information was received over a year ago regarding the possibility of PCB contaminated soil in the Canal Zone but the results of the investigation were negative. As shown above, the use of any toxic contaminant in the Canal Zone has been minimal with no harmful effects to either local populations or to the environment.

Unexploded Ordnance

77. Therefore, it appears that the main issue here is one of unexploded ordnance rather than toxic waste. The Panama Canal Treaty of 1977 provides the reference point for the United States' legal obligations in Panama. Article VI of the Treaty states that "the United States of America and the Republic of Panama commit themselves to implement this Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama". Furthermore, article IV of the agreement in implementation of article IV of the Panama Canal Treaty goes on to state that "at the termination of any activities or operations under the agreement, the United States shall be obligated to take all measures to ensure insofar as may be practicable that every hazard to human life, health and safety is removed from any defense site or military area of coordination or any portion thereof ...".

78. In considering which measures meet the Treaty's practicability standard, experts have considered several factors, including: the potential danger of the hazard to local populations; the risk that removing the hazard would harm the environment; available technology; accessibility to the ordnance given terrain constraints; and the safety of personnel conducting the removal. For example, some sections are part of the watershed area of the canal. Therefore, clearing away this area would cause erosion and increase the dredging requirements of the canal. Other sections are

irreplaceable rain forest and are home to more than 70 species of endangered and protected wildlife. Careful evaluation has revealed that further operations to clear away military material from these areas would be damaging to the environment. Additionally, clearance operations within this generally steep and inaccessible terrain would entail unacceptable risks to workers.

79. The Government of the United States has gone to great lengths to meet its obligation to perform practicable ordnance removal operations. This work began in 1996 when the United States Military began range assessments for unexploded ordnance and culminated in the transfer of three former military areas to Panama in June and July 1999. During the course of work, experts conducted a comprehensive programme of archival research to determine which range area potentially contained unexploded ordnance. The Government of the United States followed this archival research with extensive on-the-ground verification to ensure the accuracy of its findings - new data were constantly being added as technical teams evaluated the sites. United States Department of Defense policy guidance was followed in determining the appropriate actions to take for each of the range areas. This extraordinary effort, unparalleled in international experience, has virtually eliminated any risk in 98 per cent of the reverted lands. Of the 353,000 acres of land in the former Panama Canal Zone, only 2 per cent will not be available for full re-use because it would be impracticable to remove the hazards. The efforts of the Government of the United States in this regard are fully in compliance with the Panama Canal Treaty.

80. The Government of the United States has taken further steps to help ensure that the land that could not be fully cleared of ordnance does not cause safety risks to Panamanians. Upon transferring this land to Panama in June and July, the United States Military left two land management offices with sufficient equipment to allow the Panamanians to continue to maintain the security of these areas. Safety risks in these areas are also being addressed through the use of physical barriers, local education initiatives and ordnance response training for Panamanian personnel

81. Consultations with Panama over the reversion of the ranges in the former Panama Canal Zone have been ongoing since 1995. The United States Department of Defense regularly consults with the Government of Panama on environmental matters in the Canal area through the Environment Subcommittee of the Joint Committee for Treaty Implementation which was established by the Panama Canal Treaty. The United States Military has also provided relevant historical and technical documents to the Government of Panama and hosted several symposia. Additionally, the United States Military sponsored a visit to the United States by Panamanian officials, members of the media and non-governmental advocacy groups that dealt with various topics related to the ranges. Studies performed by the United States Department of Defense on the removal of unexploded ordnance in Panama have been furnished to the Government of Panama and Panamanian observers have accompanied United States teams as they performed range clearance operations. During these operations, over 112 tons of ordnance related scrap was removed. The Government of the United States has also established a working group made up of several government agencies to evaluate what environmental expertise and advice we can offer to Panama after the transfer of the Canal Zone. The Government of the United States will continue to assist Panama in environmental matters consistent with the terms of the Panama Canal Treaty.

82. The communication by the Government of the United States came with a video cassette showing the clearance of firing ranges by the American army.

3. Reply by the Government of Panama

83. The Government of Panama submitted the information below contained in communiqués by the National Authority for the Convention on Chemical Weapons (Ministry of Health) and the National Police Force.

(a) According to the Ministry of Health, when the Authority for the Interoceanic Region (ARI) started clearance of the Emperador firing range, its staff came across exploded ordnance which, by its physical characteristics, appeared to belong to G series chemical ordnance (soman, tabun and sarin);

(b) The report drawn up by the national police refers to the inspection carried out on 12 August 1999 by Panamanian observers in the area of Camp Rousseau (in the Bayonet Camp training ground), where they found M-2 type anti-personnel mines. Those ordnance residues were identified during the clearance of the firing ranges and bombing areas used by the United States armed forces on the banks of the Panama Canal, which have to be cleared under the terms of the 1977 Panama Canal Treaty.

84. Panama is also concerned by the article published in the daily Dallas Morning News on 21 August 1999, according to which the United States transported hundreds of barrels of toxic "agent orange" to Panama during the Viet Nam war; they allegedly subsequently sprayed the Panamanian forest with the agent to test its effect in a tropical site similar to the battlegrounds of south-east Asia. The United States authorities concerned have always denied the use of chemical weapons and anti-personnel mines in Panama and have stated that there is no proof that they ever tested "agent orange" on Panamanian territory.

85. A report on "The clearance of military bases and other areas used by the United States in the Republic of Panama" was annexed to the communication by the Panamanian Government. It mentioned differences between the two countries, particularly regarding the United States' responsibility for the full clean-up of about 15,000 hectares used for military purposes and on the quality of the clean-up already completed. The latter was said to be superficial and limited to areas of easy access. Exploding munitions, however, have already killed 21 persons and injured dozens of others. Instead of implementing a proper clean-up plan, which would include consideration of hazards to human life and health and environmental impact, the United States merely implemented a transfer of military areas, including superficial clearance and declining any responsibility once the areas had been returned to Panama. The Panamanian Government considers that the United States of America have not respected the terms of the treaty of 7 September 1977 concerning the return of the Panama Canal.

86. The above-mentioned report states in particular that the Republic of Panama considers that the United States is under an obligation to take all necessary steps to ensure, as far as possible, that every hazard to human life, health and safety is removed from the firing ranges. This obliges the United States to consider all existing and developing technology for the clean-up process, in consultation with the Government of Panama [...] Panama's position is

that all measures should have been taken sufficiently early to remove all hazards by the time the authorization for the use of the firing ranges expired. The field observations of our technicians have confirmed that time has been a limiting factor as far as thoroughness of execution is concerned. Panama considers, however, that if for any reason the clean-up cannot be completed before the Treaty expires, it is up to the United States to show that they made every possible effort, and that the United States are not relieved of liability for clearance operations.

87. The Panamanian Government also points out that there was never any real consultation by the United States nor effective participation by Panama in the planning, programming and implementation of works required for the collection of scientific data needed for clean-up operations.

4. Comments by the Special Rapporteur

88. The information received from various government and non-governmental sources tends to corroborate the allegations that ordnance residues are still present over an extensive area of Panamanian territory. That area is also contaminated by toxic waste, which constitutes a real hazard to human life and health. The Special Rapporteur therefore proposes to continue monitoring the efforts made to deal with the problem. She invites the Governments of the United States of America and Panama to continue their dialogue with a view to finding the best ways of settling the issue.

C. Paraguay/Delta Pine

1. The facts

89. According to sources, the state of health of a community in Rincón i, district of Ybycui, department of Paraguari, situated 120 km from Asunción, is causing widespread concern owing to the dumping of cotton seed contaminated with toxic products. The neighbourhood has reacted by protesting and calling for the removal of the consignment back to where it came from. The seed was introduced in Paraguay by the company Delta Pine.

2. Reply by the Government of Paraguay

90. The full report of the Environmental Protection Directorate (SENASA) is given below:

Background

Following complaints by inhabitants of Santa Angela and Rincón i, district of Ybycui, and complaints by journalists concerning the dumping of toxic waste in those localities, the Ministry of Public Health and Social Welfare, through the Environmental Protection Directorate (SENASA), commissioned technicians to report on the situation in the two localities.

On 8 January 1999, the Environmental Protection Directorate technicians carried out a visual inspection of the places where the cotton seed had been dumped and found serious faults in the handling and final disposal of the seed. Some seed samples were also collected for subsequent analysis in the Directorate's Department of Environmental Quality.

The technicians suggested issuing an order to:

1. Suspend the disposal of seed waste;

2. Submit a technical file setting out plans for restoration of the premises and for a place for end disposal;

3. Remove the waste material currently stored in the premises.

On 19 January 1999, SENASA notified Delta Pine Paraguay Inc of the faults observed in the course of the recent inspection.

In February 1999, technicians of the Environmental Protection Directorate and JICA experts jointly proceeded to inspect the premises in question in order to observe the state of decomposition. On 26 April 1999, technicians of the Directorate and the consultant of the Pan-American Health Organization jointly proceeded to evaluate the environmental situation of the affected area.

In April 1999, samples were taken of seeds and well water in the affected area for subsequent analysis at the Environmental Quality Laboratory (qualitative analysis by gas chromatography and mass spectrometry). An analysis was also made of the samples taken in January. A copy of the results was transmitted to the General Directorate.

The analysis showed traces of three of the products used to treat the seeds: baytan, ridomil and chlorpyrifos. According to the results of the analysis, the seeds still retain a certain quantity of these pesticides. The extraction method used did not show up any presence of pesticides in the water, although that is no guarantee that the products were totally absent. The test has to be repeated after a certain interval.

Conclusion and recommendations

The above findings will be used to initiate an administrative inquiry. We again recommend the emergency measures referred to in the order requested previously and we urge Delta Pine to comply with the order as follows:

1. To cease the open-air disposal of waste (seeds and by-products derived from their decomposition);

2. To submit a technical file [...] with plans for restoring the present premises and indicating a possible place for final disposal.

3. To transfer the waste material currently stored in the premises to a safe place, which fulfils the requirements laid down by international standards for this type of product.

We also request the installation of a protective enclosure with danger warnings, in order to isolate the premises, since the presence of animals and persons has been

observed in the building concerned. As an urgent preventive measure, it is recommended that the local school Liceo Federico Becker, situated 170 metres away, should refrain from using the well water in its present and future premises and that the school's water supply should be provided by Delta Pine in conformity with required health standards.

It is also recommended that the Ministry of Health should coordinate requests for international assistance aimed at arriving at a final solution considering all the hazards involved, on the basis of a study covering the following aspects: hydrology, dispersal of substances, water testing and permanent monitoring of the affected area.

It is also requested that health checks be made on the local inhabitants at the expense of Delta Pine.

IV. FOLLOW-UP TO MISSIONS IN THE FIELD

A. South Africa

91. In her report on her mission to Africa in 1995, the Special Rapporteur informed the Commission about a case of illegal mercury-recycling operations, which the company Thor Chemicals was performing at its plant in Cato Ridge, KwaZulu-Natal. Exploiting loopholes in the South African legislation, Thor reportedly imported and stockpiled more than 3,000 tons of toxic waste which it could not handle (E/CN.4/1998/10/Add.2, para. 18). In this connection, the Government of South Africa reported that the commission which was appointed to investigate the case, the Thor Chemical Commission, is still working on its second phase with the instruction "to investigate the regulation and enforcement relating to the monitoring and control of mercury processing and to recommend steps which could contribute to the minimization of risk and to the protection of workers and environment". At this stage it is not clear when this work will be completed. The Department of Environmental Affairs and Tourism has constituted a multi-stakeholder Steering Committee to attend to the implementation of the recommendations of the first phase report. It is estimated that the programme of implementation could take another two years.

92. Concerning the Commission of Inquiry into the import of cupric arsenite containing waste (E/CN.4/1998/10/Add.2, para. 14), the Government of South Africa indicated that the chairperson, Mr. Venter, has completed his report, which has been submitted to the State President. At this stage, the report is not yet available, but once approval for release has been received from the Office of the State President, a copy will be forwarded to the Office of the High Commissioner for Human Rights.

B. Brazil

93. The Government of Brazil took note of the points raised by the Special Rapporteur and made the following comments related to certain specific aspects of her report (E/CN.4/1999/46/Add.1).

94. Paragraph 43: the National Environmental Council (CONAMA) is an autonomous institution of the National Environmental System (SISNAMA) and has both consultant and deliberative natures; it is chaired by the Minister for the Environment.

95. Paragraph 46: it is stated that laboratories in Brazilian ports determine the nature of the products entering the country. It should be pointed out that the procedure used by customs officers is the random control of containers - believed to be the most adequate method of work nowadays - due to the huge amount of goods imported. The ongoing modernization of Brazilian ports will lead to the improvement of the present method.

96. Paragraph 47: implementation of legislation. It might be pointed out that although there are neither judges nor courts specialized in ecological offences, the need for such specialization in the judiciary is now under discussion. Brazilian legislation created the "environmental curatorships", which function under the guidance of the Public Prosecution Service. Paragraph 47 mentions a certain degree of conflict concerning the hierarchy and the applicability of resolutions of the National Environmental Council (CONAMA). It should be said that, notwithstanding the fact that in the Brazilian legal and juridical system there are different types of Acts with specific scope and enforcement characteristics, a law and a CONAMA resolution have clear differences concerning their hierarchy, applicability, enforcement level and scope. CONAMA's resolutions derive from Law No. 6.938/81 establishing the national police for the environment, and are not as comprehensive in their scope as that law, but they have a legal compulsory nature and their ruling must be enforced and respected.

97. Paragraphs 48 and 49: illegal entry of two shipments of goods with dangerous wastes. The Brazilian Government would like to reiterate to the Special Rapporteur that the products mentioned were retained in the coastal port of Santos and were not allowed to enter the country. Government authorities have been in contact with the Secretariat of the Basel Convention and with government officials of the two exporting countries mentioned in order to make possible the return of those products to the countries of origin. Another possible solution envisaged will be to charge both exporting countries with the costs originating from that illegal operation, inter alia, stocking, transport and judicial costs.

98. Paragraph 96: concerning the references made to negotiations within MERCOSUR related to toxic agricultural products, and to a supposed preference by some countries of the region for a "levelling down of standards" applicable to imports of chemical agricultural products in order to "protect their economic interests", it is necessary to point out that such an aspiration is not present in the negotiations going on in Sub-group No. 8 - agriculture policy - of MERCOSUR. The negotiations are concentrated on the simplification of procedures for registering products and not on technical issues to control imports. Brazil considers it normal and acceptable that the process of harmonization within a customs union area be concentrated on the necessity to avoid that these procedures be used as a non-tariff restriction to trade among MERCOSUR countries.

99. Still referring to MERCOSUR, the Government of Brazil considers it very useful to mention the following points:

(a) The Additional Protocol to the Treaty of Asunción on Environment Issues, in the final stage of negotiation, will have provisions on dangerous waste and products (chaps. XXI and XXII), and other relevant subjects such as the application of the Basel Convention,

(b) Since 1994, member countries have an agreement applied to the transport of dangerous products, addressing the harmonization of risk assessment methodology, the procedures to inform about incidents and classification and labelling of such products;

(c) The differences which might exist in the environmental legislation and practice of each MERCOSUR country are understandable as a natural consequence of the different levels of development.

100. Paragraph 97: it is said that Brazil does not have environmentally suitable incinerators for the destruction of polychlorinated biphenyls (PCB); in fact, there are three incinerators licensed by the competent environment authority. The authorities are now assessing the stockpile of PCB in the country in order to evaluate the necessity of licensing more incinerator units; they are also considering a system of partnership with private sectors in that area.

101. Paragraph 98: effect of residues of toxic agricultural products on watercourses. The Government of Brazil wishes to inform the Special Rapporteur that this question may be the object of future comments.

102. Paragraph 106: compensation of victims of ecological crimes. The Brazilian Government finds it necessary to clarify that the question raised by the Special Rapporteur is part of the provisions of the Brazilian Civil Code applicable not only to liability and compensation in general, but also to environmental crimes. At the international level, Brazil has been actively participating in the negotiations regarding the Protocol to the Basel Convention on the responsibilities and compensation for damages caused by transnational movement and stockpile of dangerous waste.

103. The Special Rapporteur has taken note of all the Brazilian Government's comments. She would like to add that she always welcomes any constructive comments which the Governments of countries visited would like to make on the reports of her field missions.

C. Costa Rica

104. In her report on her mission to Latin America, the Special Rapporteur considered the remedies available in Costa Rica in the event of environmental damage (E/CN.4/1999/46/Add.1, para. 51). It was noted in the report that complaints in the event of damage to the environment could be lodged with the civil courts for acts by private individuals or firms and with the Constitutional Court when the State is implicated. In its comments transmitted to the Special Rapporteur, the Costa Rican Government considered the more important features of the constitutional remedies of habeas corpus and amparo available in Costa Rica. It pointed out that under the Costa Rican legal system, administrative proceedings and, where appropriate, constitutional proceedings may also be initiated against the State. The Constitutional Jurisdiction Act allows a remedy of amparo against private individuals where these are acting or have to act in the performance of public duties or are placed, de jure or de facto, in a position of authority, against which common legal remedies are clearly inadequate or too slow to guarantee rights or freedoms. A very detailed document concerning constitutional remedies available under article 48 of the Constitution, in the event of environmental damage, is available for consultation at the Office of the High Commissioner for Human Rights.

105. In the case of the 11,000 workers sterilized as a result of the intensive use of dibromonochloropropane (DBCP) on the banana plantations of the American United Fruit Company and Standard Fruit Company, between 1967 and 1979 (E/CN.4/1999/46/Add.1, paras. 56-62), the Defensoría de los Habitantes de Costa Rica (Ombudsman) again informed the Special Rapporteur that neither the companies involved nor the Costa Rican Government have yet paid any compensation to the victims or their families, despite the fact that their liability has been legally proved. The Ombudsman also points out that the request for assistance to the World Health Organization for an epidemiological study into the effects of DBCP on the female population of the banana plantations had met with no response, although the study was necessary to obtain compensation for thousands of the workers' companions, spouses and daughters.

106. The Special Rapporteur once again wishes to draw the urgent attention of the Commission on Human Rights to this case in the hope that the Costa Rican Ombudsman's request for compensation for the victims will meet with a suitable response and that proceedings will continue against the United Fruit Company and Standard Fruit to ensure that they assume their liabilities. WHO for its part should provide technical assistance in order to produce chemical data concerning the state of health of women who have been in contact with DBCP. The Special Rapporteur is awaiting developments on this case.

D. Paraguay

107. The Paraguayan Government transmitted a communication to the Special Rapporteur recalling that, in 1997, it had drawn the international community's attention to the discovery, in the Port of Asunción, of 1,118 barrels of dangerous or toxic wastes which had entered Paraguayan territory illegally and had been stored there since 1992. In January 1998, Paraguay had requested the assistance of the Secretariat of the Basel Convention, which sent a team of French experts to Paraguay. In May 1998, the latter took samples of the barrels for subsequent analysis. A total of 1,036 barrels were counted on that occasion. The samples were analysed in French laboratories and an analysis report was sent to Paraguay.

108. In its communication, the Government also recalls the Special Rapporteur's mission to Paraguay (14-19 June 1998) and the recommendations she put forward in her report of 11 January 1999 (E/CN.4/1999/46/Add.1, para. 125).

109. Following up those recommendations, the new administration of the Paraguayan Ministry of Foreign Affairs reactivated the National Executive Committee on the implementation of the Basel Convention, initially set up by Decree No. 20261 of 16 March 1998. Official notes were sent to member institutions of the committee asking them to appoint new representatives, and the committee met on 3, 12, 17 and 27 August 1999 to consider the situation. Its members also contacted the judge and the prosecutor in charge of the case in order to expedite the procedure.

110. The case is currently with the courts. The corresponding case file, entitled "Examination of charges for breaches of legislation on the protection of the environment (toxic waste)", is being investigated by the Criminal Court of First Instance of the Octavo Turno. The investigation concerns the content of the barrels, the identity of those responsible and the

enforcement of penalties once the court has issued its ruling. The judge on the case indicated that he needed the assistance of a certified chemist to help him with the technical aspects of the documents contained in the file.

111. At its last meeting, the committee, pointing out that its members represented institutions possessing the necessary competence, offered to assist the judge with the interpretation of the technical report. The committee also requested assistance to study the file and forwarded the offer to destroy the content of the barrels made by the Netherlands.

112. In August 1999, the committee was awaiting the judge's response to its request for a ruling in the case within the time limits prescribed by the Code of Criminal Procedure, in order to allow the implementation of the proposed solutions.

113. The 1,036 barrels, not counting those sent to the National Institute for Technology and Standardization (INTN) under the judge's ruling, as indicated in the report by the French experts, are currently stored in hangar G of the Port of Asunción, in the state the French experts left them in May 1998, that is, separated into categories of products (acids, alkalis, sundry chemical products) according to the experts' analysis. Inside the hangar, the barrels are surrounded by a protective wall some 80 cm high, which was built in January 1998 following an expert's visit, to avoid any risk of contamination of the Paraguay river which might result from flooding. It may be noted that all risk of contamination has not been eliminated, since an accident, a collapse, a fire or an act of sabotage could occur at any time.

114. The following measures were considered by the committee and subsequently submitted for the attention of the judge in charge of the case:

(a) The barrels should be transferred to a new site away from inhabited areas in order to ensure safe storage;

(b) The content should be eliminated in a waste-water treatment station (only those barrels indicated in the report of the team of French experts);

(c) Some barrels should be transferred to a processing plant, designated as mineral or organic products for industrial use (only barrels indicated in the report of the French experts);

(d) The signatory countries of the Basel Convention are to be asked for assistance to destroy the barrels under suitable conditions, since Paraguay does not have the necessary facilities. The Netherlands Government has already made an offer in that respect.

The committee undertakes to continue cooperating with the judge in order to help him reach a favourable decision which will settle the matter once and for all. It will submit a further interim report on the case within three months.

115. The Special Rapporteur draws attention to the recommendations she made after her visit in June 1998 and which are given in paragraph 125 of report E/CN.4/1999/46/Add.1. She reiterates her appeal for appropriate international assistance.

IV. CONCLUSIONS AND RECOMMENDATIONS

116. The Special Rapporteur wishes to draw the attention of the Commission on Human Rights to the conclusions and recommendations expressed in her previous reports, especially those in her report E/CN.4/1998/10 (paras. 53-106) and its addendum 2 containing the recommendations arising from her visit to Africa (paras. 54-63), and in the report E/CN.4/1999/46 (paras. 94-110) and its addendum 1 relating to her mission to Latin America (paras. 107-125). The present report should be seen in the light of those conclusions and recommendations, which remain valid. She also draws the Commission's attention to the conclusions and recommendations appearing in the addendum to this report, which arose from her visit to Germany and the Netherlands (E/CN.4/2000/50/Add.1).

117. The Special Rapporteur further draws the Commission's attention to the absence of any tangible results regarding a solution to proven cases of illicit transfer of toxic products and regarding compensation for the victims and their families.

118. It emerges from the analysis of communications received by the Special Rapporteur in recent years that the most alarming cases are related to the intensive and uncontrolled use of chemical substances, toxic agricultural products and persistent organic pollutants. The Special Rapporteur hopes that the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade will enter into force as soon as possible.

119. The Special Rapporteur welcomed the adoption by the Fifth Meeting of the Conference of the Parties to the Basel Convention (December 1999) of the Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal. The Special Rapporteur hopes that the Special Fund set up under the aegis of the Basel Convention to settle damage covered by the Protocol will help resolve outstanding cases and others which may arise in the future.

120. The Special Rapporteur draws the attention of the Commission on Human Rights to the problems which arise from the export of contaminated ships due for scrapping to developing countries. There is an urgent need for this problem to be addressed in all its aspects by the appropriate international bodies. The Commission on Human Rights for its part should consider the human rights aspects of the problem.

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Report submitted by Mrs. Fatma-Zohra Ouhachi-Vesely, Special Rapporteur on the illicit movement and dumping of toxic waste

Addendum

Report on the mission to Germany and the Netherlands

CONTENTS

	Paragraphs	Page
Introduction	1 - 4	3
I. TALKS AND CONSULTATIONS IN THE NETHERLANDS	5 - 31	3
A. Toxic and dangerous product management	6 - 9	3
B. Legal and institutional context	10 - 20	4
C. Visit to the Port of Rotterdam	21 - 24	7

GE.00-11739 (E)

CONTENTS (continued)

	Paragraphs	Page
D. Technical cooperation	25	7
E. Comments by the Netherlands Committee on Human Rights	26	8
F. Investigation of the export of contaminated glycerine to Haiti	27 - 31	8
II. TALKS AND CONSULTATIONS IN GERMANY	32 - 53	9
A. Toxic and dangerous product management	35 - 37	10
B. Legal and institutional context	38 - 45	10
C. Technical cooperation	46 - 47	14
D. Visit to facilities for the storage, processing and disposal of dangerous products	48 - 53	14
III. CONCERNS EXPRESSED BY NON-GOVERNMENTAL ORGANIZATIONS	54 - 72	16
A. Export of ships for extremely hazardous recycling operations	54 - 60	16
B. Export of plastic wastes containing hazardous substances	61 - 67	18
C. Human rights abuses resulting from the trade in pesticides	68 - 72	19
IV. CONCLUSIONS AND RECOMMENDATIONS	73 - 80	20
Annex: List of persons, departments, enterprises and organizations consulted by the Special Rapporteur during her mission		23

Introduction

1. In accordance with the mandate given to her by the Commission on Human Rights in resolutions 1995/81 and 1999/23, the Special Rapporteur wished to undertake a mission to Europe in order to ascertain the problems arising in certain countries in the region with regard to the illegal traffic in toxic and dangerous products and wastes and the enjoyment of human rights. Accordingly, at the invitation of the German and Netherlands Governments, she visited Germany and the Netherlands from 18 to 29 October 1999, as a follow-up to her visits to Africa in 1997 and Latin America in 1998.

2. The purpose of this mission was to hold consultations, study the laws in force in the two countries and learn more about their policy. The Special Rapporteur was also keen to exchange views with the authorities regarding specific allegations of illicit exports of toxic and dangerous products to developing countries. She also intended to study national and regional measures to prevent and punish such illicit activities.

3. In addition, the Special Rapporteur wished to take the opportunity to sensitize the German and Netherlands authorities to the importance of her mandate from the human rights perspective, and to the complementarity of her work with that of the secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as well as other United Nations bodies.

4. The Special Rapporteur is grateful to the German and Netherlands Governments for their full cooperation and the assistance they extended to her during her mission. She also wishes to thank national institutions and non-governmental organizations (NGOs) for making themselves available and supplying her with information, and the staff of the United Nations information centres in Brussels and Bonn for the logistical support given to her mission.

I. TALKS AND CONSULTATIONS IN THE NETHERLANDS

5. During her visit to the Netherlands, the Special Rapporteur met senior officials from the Ministry of Foreign Affairs, the Ministry of Housing, Spatial Planning and Environment, and the Ministry of Health, Welfare and Sport. She also talked with members of the Committee on Human Rights of the Advisory Council on International Affairs, the national Ombudsman and the Prosecutor handling the case of the contaminated glycerine sold by a Netherlands company to a Haitian pharmaceuticals enterprise. The Special Rapporteur also had a discussion with the representative of Greenpeace International responsible for the transboundary movement of toxic waste. She visited the control facility at the Port of Rotterdam where containers for hazardous substances and products are checked as they enter and leave the port, and talked with the customs officials in charge of the facility.

A. Toxic and dangerous product management

6. The national policy for managing toxic and dangerous products is defined by a Multi-Year Plan for Hazardous Wastes for the period 1997-2007, based on European

Directive 75/442/EEC. The plan aims to prevent the production of hazardous waste, encourage the storage of dangerous waste in appropriate facilities without risk to the environment, and dispose of waste that cannot be stored by using state-of-the-art techniques.

7. The principal means of securing these objectives are legislation and regulation (e.g., issuance of licences, administrative, police and customs checks, local by-laws and ordinances, and administrative decisions), financial incentives, research, publicity and selection of sites.

8. According to article 5 of Council Directive 75/442/EEC (itself based on the Basel Convention), the centrepiece of this policy is to ensure that the Netherlands has adequate capacity to store or dispose of waste as closely as possible to the site where it is produced. It also aims to prevent the export of dangerous waste to countries which lack the appropriate management capacity. A nationwide waste collection system has been established. Thus the Netherlands authorities claim that, in accordance with European law (Council Regulation No. 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community) and international law (the Basel Convention), no dangerous waste has been exported to developing countries which lack the means to process it. The authorities do not issue permits for exports of this nature. Only non-dangerous recyclable waste may be exported, and only if the exporter has obtained the proper licence.

9. The Ministry of the Environment is planning to conduct a statistical study in 2000 on the amount of waste produced and managed in the Netherlands and the amount legally exported, thereby facilitating the detection of any illegal exports.

B. Legal and institutional context

10. The Environmental Management Act (the instrument under which articles 14-18 and article 26.1 of Council Regulation (EEC) No. 259/93 are incorporated into domestic legislation), and particularly chapter 10 focusing on waste, provides the legislative framework for dangerous waste management policy. The regional authorities, in cooperation with the Ministry of the Environment, have instructions to supervise and inspect the collection, transport, storage, recycling and disposal of waste. It is therefore the responsibility of the regional authorities to license enterprises wishing to collect, store or dispose of waste.

11. As far as transboundary movements of waste are concerned, the Netherlands is a party to the Basel Convention, but has not ratified Decision III/1 (the amendment thereto) prohibiting the export of dangerous wastes for final disposal or recycling from States members of the Organization for Economic Cooperation and Development (OECD), the European Community (subsequently the European Union) or Liechtenstein to other States parties. However, because the European Union ratified the amendment to the Basel Convention and adopted the principle of a complete ban on the export of dangerous waste for disposal in non-industrialized countries well before this amendment was passed (article 14, Regulation 259/93 EEC), the Netherlands has also incorporated this provision into its law. The authorities claim that the Netherlands pioneered the inclusion of this provision in European law well before it became an amendment to the Basel Convention.

12. An Environmental Inspectorate reporting to the Ministry of the Environment has been established to ensure that the law is enforced by regional authorities and enterprises. It has a crucial role to play in tackling environmental crime, particularly the illicit movement of dangerous wastes. It can draw on the services of an environmental response team comprising special officers from the Ministry of the Environment, the police and the customs service. The Inspectorate has a presence in all five regions of the country (north, north-west, south, south-west, east).

13. A total of 125 inspectors from the Ministry of the Environment, a force of police officers including 10 environmental protection specialists, and 100 customs officers trained to detect and analyse dangerous wastes are empowered to supervise waste movements. They work together closely as a team, thereby facilitating a rapid exchange of information. The traffic police are empowered to stop and search vehicles at any time to check their load and destination, and to summon one of the 10 special environmental officers if further inquiries need to be made. A satellite tracking system enables consignments of dangerous waste to be followed from their point of origin to their destination with the aid of signals from a bar code affixed to the vehicle.

14. The inspection procedure also involves visits to enterprises which are authorized to trade in waste. In the case of illegal exports, the Ministry of the Environment takes the necessary steps to re-export consignments, as happened in 1994 when plastic wastes were exported to Indonesia and Hong Kong. In recent years, no applications have been received from developing countries to take back exported waste.

15. The export of toxic waste to third-world countries is prohibited under section 10.44 (e) of the Environment Act. Breaches of this Act are punishable by a fine or one to six years' imprisonment if the act was committed intentionally, in accordance with section 1 (a) of the Economic Offences Act. Under the Environment Act, the party responsible for the unlawful export of toxic waste is obliged to transport it back to the Netherlands (chapter 18). The Ministry of the Environment is responsible for enforcing this provision.

16. In addition, the Netherlands forms part of the European network for the implementation and enforcement of environmental law (IMPEL), a framework dating from 1992 which enables European countries to cooperate in monitoring transboundary movements. The network is an information-sharing mechanism between partners that operates through a database of national monitoring authorities. It also aims to harmonize legislation and codes, draw up lists of hazardous and non-hazardous products, and formulate licences and permits for the transport, storage and disposal of waste.

17. However, this network concentrates primarily on the movement of waste within Europe (between members of the European Union and between European Union and other European countries). The issue of waste exports to non-OECD countries seems to have come to the fore only recently, for example at the most recent conference on Transfrontier Shipments of Waste (TFS) attended by members of this network (Copenhagen, 3-5 March 1999). It was acknowledged at this meeting that "there are discrepancies between the European Union Member States on how to act in the case of export of green-listed waste to non-OECD countries, because the procedure in the European Union Regulation 259/93 (art. 17) is not clear at all points".

18. In considering the potential for cooperation and information-sharing between port-based customs authorities and the authorities responsible for preventing and punishing illicit traffic, it was pointed out that information is shared on a regular basis with the Hong Kong authorities (creation of a focal point). The Netherlands authorities are willing to extend this experiment to other countries in Latin America and Africa.

19. Responding to the Special Rapporteur's concerns on allegations that there has been an increase in the illicit trade of obsolete pharmaceuticals and chemicals which are banned in industrialized countries but which continue to be exported freely to developing countries, the Netherlands authorities stated that they enforce European legislation which stipulates that only end products permitted in Europe may be exported. The policy of the Netherlands also conforms to the standards set by the World Health Organization (WHO), for example compliance with the WHO list of export-prohibited medicines. There is no restriction on the export of starting materials destined for the manufacture of medicines in other countries. It is the responsibility of the authorities in the importing country to check the quality of imported products, a role performed in the Netherlands by a Ministry of Health inspectorate.

20. Furthermore, it was a Netherlands initiative that prompted WHO to organize an international forum at Geneva (25-27 May 1998) to adopt guidelines covering the certification, distribution and sale of starting materials for the manufacture of pharmaceuticals. The main recommendations that emerged from this meeting, as contained in document WHO/PHARM/98.605 (in English only), are as follows:

- Starting materials purported to be used as pharmaceutical starting material must meet all of the quality criteria suitable for the intended pharmaceutical use;

- Starting materials designated to be of pharmacopoeial quality should meet the respective requirements before the material can be labelled and accepted for the intended pharmaceutical use;

- Starting materials should be manufactured, handled and distributed according to WHO good manufacturing practices from the moment they are designated for pharmaceutical purposes;

- National and regional legislation on medicinal products should be extended to cover starting materials;

- National and regional legislation on medicinal products, including starting materials, should be extended to free ports;

- Key parties in the chain - producers, traders, forwarders, tenderers, brokers - must be authorized for their activities by the competent health authority of the country in which each activity occurs. [...] Authorization requires adequate inspection. Failure to follow the requirements of the authorization must have appropriate legal consequences. There should be free and open exchange of information on such cases between Governments;

- [...]

- WHO should issue guidance about the certificate of analysis, which should represent the original data, including the name of the manufacturer, the batch number, the results of qualitative and quantitative measurements, the methods used (specifications), and the signature of the issuer of the certificate of analysis.

[...]

C. Visit to the Port of Rotterdam

21. The visit to the Port of Rotterdam enabled the Special Rapporteur to acquaint herself with the working methods of the Environmental Inspectorate. In 1999 the customs service took delivery of a powerful scanner which is able to detect or provide a rough idea of what is inside containers entering and leaving the port. The Special Rapporteur attended a demonstration of this equipment.

22. Aware that Rotterdam is a transit port for goods exported onwards to a wide variety of destinations, the port authorities seek to ensure that transit cargoes conform to Netherlands legislation and perform the necessary checks to determine any irregularities. More than 5 million containers pass through the port annually and approximately 80 a day are X-rayed. The images obtained are compared with the description of the product on the consignment note. If the images are suspicious, the container is opened to check its contents. Thus, in a Ghana-bound container with a purported consignment of car parts, customs officers were able to discover freon-filled refrigerators.

23. According to port authority figures, about 500 unlawful attempts to export dangerous waste products are exposed every year. Many of the consignments are bound for developing countries (Ghana, China, Malaysia). In Asia-bound cargoes, these attempts chiefly involve plastic wastes containing polychlorinated biphenyls (PCBs).

24. There exists a "fast-track" procedure enabling the customs authorities to refer cases to the prosecutor expeditiously with a view to taking rapid enforcement measures against persons domiciled in the Netherlands who are discovered in the very act of committing an offence.

D. Technical cooperation

25. The authorities report that the Netherlands is currently taking part in a project under the auspices of the United Nations Environment Programme (UNEP), to which they have pledged $1 million, which aims to strengthen environmental protection legislation in several developing countries. At the request of various international organizations such as the secretariat of the Basel Convention, the Netherlands is prepared to train judges, police and other officers (especially customs officials) in developing countries with the necessary skills to control the entry of goods into ports and across land frontiers.

E. Comments by the Netherlands Committee on Human Rights

26. The Committee on Human Rights is simultaneously a subsidiary body of the Advisory Council on International Affairs and an autonomous entity. It submits opinions to the Ministry of Foreign Affairs regarding human rights policy. Generally speaking, the Committee favours some form of linkage between protection of the environment – which falls within the scope of collective rights – and human rights. It has recommended that the Government should adopt a flexible position in international bodies to the extent that the recognition of collective rights contributes to the strengthening of universally recognized individual rights. The Committee als acknowledged a link between environmental protection and the right to development. Member of the Committee have thus expressed their support for the Special Rapporteur's mandate whic aims to protect the rights of individuals and whole populations to life, health and a salubrious environment.

F. Investigation of the export of contaminated glycerine to Haiti

27. The Special Rapporteur met with the Prosecutor handling the case of the Haitian childre who died after ingesting an antipyretic syrup made from glycerine unsuitable for medical use which had been exported to Haiti by a Netherlands-based company (full details may be found in the previous report, E/CN.4/1999/46, paras. 50-64). To recapitulate the salient points of the case: in 1996 and 1997 at least 48 children in Haiti allegedly died of acute kidney failure after taking contaminated liquid acetaminophen (trade name: Afebril) made by Pharval, a pharmaceutical company in Haiti. The Haitian acetaminophen was contaminated with an automobile antifreeze ingredient called diethylene glycol.

28. It is alleged that the Netherlands company Vos BV knew that the medication delivered t Haiti in 1995 and which caused the death of the Haitian children was not pure. An investigation revealed that the company had sent a sample of the glycerine to a laboratory for analysis prior to delivery. Although the results showed that the glycerine was unsuitable for medical use, it was still sold, through a German company, with a "pharmaceutical quality" certificate.

29. After questions were raised about its role by the Netherlands Ministry of Public Health, the United States Food and Drug Administration (FDA), and the competent Government bodies, Vos stated in 1997 that the glycerine had not been tested by a laboratory. However, the glycerine does in fact appear to have been tested in late February 1995 by SGS Laboratory Services in Dordrecht, around the time it was transported from Amsterdam to Haiti. According to employees of SGS Laboratory Services, that laboratory had carried out research for Vos "for years". According to the laboratory report compiled by SGS, the glycerine was only 53.9 per cent pure, whereas according to international pharmaceutical standards, glycerine must be at least 95 per cent pure. Vos BV had pasted labels on the barrels of glycerine bearing the certificate "GLYCERINE 98 PCT USP"; the designation "USP" (United States Pharmacopoeia) is an internationally recognized certification in the pharmaceutical industry.

30. The affair came to light in July 1997 after dozens of children had died in Haiti after taking paracetamol syrup for fever, sore throat and headache. The syrup, in which the glycerine delivered by Vos was an important ingredient, had been produced by the Haitian pharmaceutical company Pharval. In 1997, the Haitian Government requested help from the FDA to carry out

an investigation to discover the origin of the glycerine. FDA investigators visited different countries, including the Netherlands, and their subsequent report revealed that the glycerine had been mixed with the antifreeze diethylene glycol. In high doses, this product is fatal for children.

31. In March 1998 the Netherlands Government briefed the Special Rapporteur on the progress of the investigation launched on 4 August 1997. The conversation she had with Mr. Gert Haverkate, the Prosecutor handling the case, enabled her to note the stage reached in the inquiry. However, information which remains confidential at this stage cannot be revealed. While noting with satisfaction that legal proceedings have commenced, the Special Rapporteur stressed that the matter should be dealt with as expeditiously as possible, without sacrificing the interests of the victims or the search for the truth in favour of an amicable solution with the enterprise implicated in the affair. She also emphasized that the handling of this case would form a precedent in terms of encouraging or discouraging illicit trade in dangerous substances. While making clear her respect for the procedures in place in the Netherlands and her intention to abide by the principle of exhaustion of domestic remedies, the Special Rapporteur reiterated that she had a keen interest in the affair and would continue to monitor developments. Accordingly, she would be grateful if the Netherlands authorities would keep her abreast of all developments and notify her of any relevant court or other decision.

II. TALKS AND CONSULTATIONS IN GERMANY

32. In Germany the Special Rapporteur met Ms. Probst, Secretary of State for Environment, Nature Protection and Nuclear Safety, and other senior officials of that Ministry and the Ministry of Foreign Affairs. She also had talks with representatives of NGOs (Greenpeace International, Pesticide Action Network) and a representative of Oeko-Institut e. V.

33. A number of Government officials immediately stressed Germany's commitment to support and strengthen the special mechanisms of the Commission on Human Rights, and in that connection they plan to issue a general and standing invitation to visit Germany. As part of this open policy, they are prepared to cooperate with the Special Rapporteur notwithstanding the fact that Germany originally opposed her mandate. Other officials welcomed the Special Rapporteur's visit and said that they were aware of developing countries' concerns over the illicit trade in dangerous waste. They assured the Special Rapporteur that her visit would enable her to appreciate German efforts to prevent this practice through comprehensive management of waste products. The point was made that it was the responsibility of developed countries to take steps to reduce the output of waste or to manage waste at the point of origin. The German Government encourages German enterprises voluntarily to apply the same production standards in developing countries as are applied in Germany; it also opposes exports by polluting industries.

34. The Special Rapporteur visited the facilities of Kali und Salz at Herfa Neurode (Hesse) region. This company, a specialist in the storage of dangerous non-organic wastes, demonstrated the effectiveness of its waste management technology. The Special Rapporteur also visited the waste management facilities at the Bayer A.G. pharmaceutical company (Leverkusen, Rhineland).

A. Toxic and dangerous product management

35. The basic principle underlying German policy on wastes in general and dangerous or "special" wastes in particular is to avoid producing them in the first place if possible, both in industry and in the domestic environment. Accordingly, every encouragement is given to the production of long-life items and multi-purpose packaging materials. Ever since the 1970s, German society as a whole has been sensitized to environmental questions and the need to avoid waste production, and failing that the importance of recycling reusable materials. The country is moving towards a closed-cycle model of waste management in which manufactured items and substances are designed to be reused or reprocessed rather than discarded after use.

36. Until such a time, and insofar as is practicable, unavoidable refuse is recycled or stored in an appropriate environmentally-safe facility or disposed of using state-of-the-art-techniques which minimize the threat to the environment.

37. Detailed legislation covering almost every aspect of human life has been adopted by regional authorities, and the law must be observed by industries and individuals alike.

B. Legal and institutional context

38. The Waste Avoidance and Management Act (Abfallgesetz) was adopted in 1986 to tackle the problems caused by refuse production. Article 14 of this Act announced a series of ordinances on the recycling of refuse:

- Ordinance on packaging (Verpackungsverordnung);
- Ordinance on refuse oils (Altölverordnung);
- Ordinance on solvents;
- Ordinance on refuse paper (Altpapierverordnung);
- Ordinance on electronic refuse (Elektronikschrott-Verordnung);
- Ordinance on vehicles destined for scrap (Altauto-Verordnung);
- Ordinance on used batteries (Altbatterien-Verordnung);
- Ordinance on building waste (Baurestabfall-Verordnung);
- Ordinance on biological waste;
- Ordinance on waste water.

39. In 1994 the Waste Avoidance, Recovery and Disposal Act was reformulated in order to implement European law, particularly Directive 91/156 on waste and 94/31 on hazardous waste. The new Act broadens the definition of "waste" to include not only waste intended for disposal

but also recyclable waste. The expansion of the waste definition is based on environmental policy perspectives. Under previous waste management laws, substances normally were considered waste only if their owners wished to dispose of them; consequently, it was easy for waste owners to circumvent waste management law by simply claiming to intend to recycle. This was highly problematic, especially because the environmental standards for "recycling" of so-called "residual substances, recyclable substances or commodities" were very incomplete; this legal deficiency has often led to environmental scandals in the past.

40. The management of dangerous or special wastes is covered by the 1996 Ordinance on the codification of wastes requiring special supervision. This ordinance covers waste that, on the basis of its potential hazards, must by law always be supervised within a formalized documentation procedure. It covers both waste for recovery and waste for disposal.

41. The application of this legislation is overseen by regional environment ministries in cooperation with the Federal Government. Wastes may not be transported without a consignment note duly signed by the originating enterprise and the competent regional authorities. The traffic police may carry out checks at any time.

42. At national level there is also a Federal Environment Office reporting to the Ministry of the Environment, Nature Protection and Nuclear Safety. Its function is to carry out studies and advise federal and local authorities, enterprises and the public on best practice with regard to environmental protection.

43. In the light of their waste management policy, legislation and infrastructures, the authorities are of the opinion that Germany possesses a waste-processing capacity far exceeding national output, to a point where German enterprises operating in this field are actually importing wastes from other European countries in order to reduce costs. For this reason, the authorities claim that it is hardly conceivable that waste is being exported from Germany illegally. Germany is a party to the Basel Convention, which it enforces strictly. The three tables below indicate that the only wastes exported are those destined for recycling in countries which allow their importation and possess the appropriate processing capability.

Table 1

Total waste exports from Germany (1995-1997)

Destination country	Quantity (tonnes)		
	1995	1996	1997
Austria	8 192	6 480	34 716
Belgium	216 195	185 151	106 855
Bulgaria		138	7 380
Canada	1 256	216	627
China	496	924	333
Croatia	8 284	19 598	33 452
Czech Republic	108 460	94 086	99 216
Denmark	50 710	55 697	42 900
Estonia		1 945	
Finland	556	2 722	1 673
France	247 897	209 241	213 403
Hungary	44 089	49 221	50 399
India	3 661	1 216	1 006
Indonesia			40
Israel	35	39	
Italy	2 484	112 791	255 221
Kazakhstan	676	584	
Lithuania	935		11 138
Luxembourg	22 694	58 222	51 156
Malaysia		309	309
Mexico		440	37
Netherlands	167 253	175 938	168 094
Norway	12 564	13 728	5 423
Poland	18 831	14 699	10 629
Portugal	1 212	610	
Romania		93	6 410
Slovakia	22 907	27 972	10 418
Slovenia	1 459		
Spain	31 995	44 008	3 647
Sweden	37 393	42 710	46 852
Switzerland	29 745	25 014	51 233
Ukraine	110	243	13
United Kingdom	34 498	41 701	49 231
United States of America	23 144	34 149	14 147
Total	1 099 290	1 220 078	1 227 847
Dangerous wastes as per Basel Convention	740 272	321 718	600 749
Recyclable wastes	938 642	1 107 895	1 125 872
Disposable wastes	160 901	112 183	151 975

Source: Federal Environment Office, 25 October 1999.

Table II

Waste exports to developing countries (before 1998)

Destination country	Year	Quantity (tonnes)	Nature of waste	Disposal or recovery process
China	1996	924	Sundry electronic refuse (e.g., circuit boards)	Recovery of metals or metal compounds
India	1996	325	Plastic packaging materials	Recovery of organic substances
India	1996	340	Plastic, rubber and synthetic fibre refuse	Recovery of organic substances
India	1996	403	Plastic, rubber and synthetic fibre refuse	Recovery of organic substances
Malaysia	1996	309	Zinc	Recovery of metal or metal compounds
China	1997	36	Scrap	Recovery of metals or metal compounds
China	1997	84	Scrap	Recovery of metals or metal compounds
China	1997	214	Cables	Recovery of organic substances
India	1997	210	Shredded plastic	Recovery of organic substances
India	1997	796	Plastic, rubber and synthetic fibre refuse	Recovery of organic substances
Indonesia	1997	40	Iron filings and non-ferrous scrap	Recovery of metals or metal compounds
Malaysia	1997	309	Zinc	Recovery of metals or metal compounds

Source: Federal Environment Office, 25 October 1999.

Table III

Waste exports to developing countries (1998)

Destination country	Quantity (tonnes)	Nature of waste	Disposal or recovery process
Costa Rica	31	Clothing	Recovery of organic substances
India	0	Plastic packaging materials	Recovery of sundry inorganic substances
India	340	Shredded plastic	Recovery of organic substances
Philippines	10 634	Shredded plastic	Recovery of sundry inorganic substances

Source: Federal Environment Office, 25 October 1999.

44. It is true that the high storage or disposal costs of certain wastes (between 1,000 and 2,000 deutsche marks (DM)) could be a factor in forcing enterprises with insufficient resources to look for cheaper solutions outside Germany. When, exceptionally, cases of illicit traffic in dangerous wastes come to light – such as occurred with certain German exports to Albania, Portugal and Romania – there is a procedure and a special fund to secure their repatriation. The fund, set up in 1996, is maintained by contributions from all enterprises involved in waste management. It currently contains DM 16 million. Contributions are reimbursed to enterprises which commit no offences within a three-year period. This incentive has led to a decline in illegal exports from 12 cases in 1996 to 2 in 1999.

45. Under article 326, paragraph 2, of the Criminal Code, environmental crimes are punishable by five or six years' imprisonment for any person engaged in the illegal traffic of dangerous wastes. Likewise, under article 12 of the Ordinance on transport licences, it is an offence unlawfully to convey dangerous substances.

C. Technical cooperation

46. When asked about the possibility of helping to resolve the case of the barrels of toxic waste stored at the port of Asunción in Paraguay (see E/CN.4/1999/46/Add.1 and E/CN.4/2000/50), officials stated that the German Government would look favourably upon any request submitted to it in this matter. But for reasons of morality and efficiency, they believed it was important to try to establish the truth by determining the origin of the product involved and prosecuting those responsible. Germany is already taking part in a number of UNEP environmental protection projects, many in developing countries including Paraguay (decontamination of soils), either in the context of strengthening legislation or strengthening waste management capacity, as in China.

47. As part of its cooperation programme, Germany recovers wastes or obsolete chemicals produced by its enterprises which cannot be disposed of in developing countries. In Mozambique, the BASF corporation has decontaminated a site polluted by one of its subsidiaries.

D. Visit to facilities for the storage, processing and disposal of dangerous products

48. In order to demonstrate the control of storage, processing and disposal of dangerous wastes, the Special Rapporteur was invited to visit Kali und Salz's Herfa Neurode site in Hesse region and the various facilities belonging to the multinational corporation Bayer at Leverkusen in the Rhineland. The intention was to show, first of all, how a private enterprise manages waste produced by other industries, and second, how an industrial enterprise processes its own wastes.

1. Herfa Neurode site

49. The Herfa Neurode site is located 700 metres underground in a geological complex composed of impermeable, isolating rocks (potassium salts, chalk, clay, anhydrite). Since 1912, the company Kali und Salz has excavated 130 km^2 of underground galleries to extract potassium salts. These galleries are now used to store special wastes produced by German industry and others. The site has approximately 6 million m^3 of storage space and currently holds

2 million m^3 metres of wastes. Wastes arrive at the site presorted and packaged in vats, containers or sealed bags. The substances involved are dangerous inorganic wastes but they pose no threat to health. For security reasons and to protect the environment, they must be non-explosive, non-radioactive, non-flammable, non-gas-emitting and non-chemically reactive. All these properties, as well as the condition of the packaging, are checked on reception (using laboratory detection instruments), and if they fail to meet the prescribed standards they are returned to their point of origin.

50. The wastes are classified, logged in and stored by category (salt residues, metal-processing residues, chemical substance residues, hydrocarbon residues, residues containing mercury, cyanides or lead, condensers, transformers, etc.). In addition to the natural barriers separating the different categories of wastes at the site, man-made barriers such as brick walls form a supplementary layer of protection. Kali und Salz also handles wastes from Austria, Belgium, Denmark, Greece, Italy, Luxembourg, the Netherlands, and Switzerland. It is the view of the company that, as the potassium salt mine expands, the site may be used for storage purposes for the next 200 years.

2. The Bayer facilities at Leverkusen

51. In view of its significant financial and material resources and the large quantity of dangerous wastes which it generates in the course of its diverse operations (pharmaceuticals, chemistry, aluminium and plastics), the Bayer corporation, prompted by the Ministry of the Environment, has developed state-of-the-art facilities to process its own waste products. Its facility at Leverkusen comprises a waste water treatment plant, a dangerous wastes incinerator and an open dump for non-organic refuse. The corporation spends more than DM 1 billion a year on dangerous wastes processing. The Leverkusen facility processes 45,000 tonnes of waste a year and costs DM 200 million a year to operate.

52. Generally speaking, in order to reflect Government policy in its operations, Bayer's representatives say that both the parent company and its foreign subsidiaries are making strenuous efforts to make their production processes environment-friendly. Hence the adoption of the company Guidelines for Responsible Care in Environmental Protection and Safety, as follows:

(a) All employees bear responsibility for ensuring that the company's environmental protection objectives are achieved.

(b) Environmental protection does not only mean complying with laws and regulations. All employees are called upon to take supplementary measures on their own initiative.

(c) Production facilities must be operated in such a way as to ensure the safe handling of products and wastes.

(d) Production processes must be constantly reviewed and, where possible, improved to minimize raw material and energy inputs, emissions and waste generation. Waste material must be reusable, recyclable or capable of environmentally safe treatment and disposal. In-process waste-reduction methods should be given preference over end-of-process treatment or disposal.

As a result of this policy, Bayer estimates that it has reduced its total waste output (all categories, i.e. household waste, chemical waste, sewage sludge) from 850 tonnes in 1981 to 766 tonnes in 1998.

53. Responding to the Special Rapporteur's concern over allegations that Western firms do not apply the same standards in developing countries as in industrialized countries (working conditions for local employees; lower production standards; improper use of chemicals prohibited in Western countries which are exported, produced or employed without restrictions; transfer of heavily polluting industries; illicit export of dangerous wastes, etc.), a Bayer representative said that the company pursued an environmentally-friendly policy, and that it applied the same standards in developing countries as it demanded for its operations in industrialized countries. For example, in India and Latin America (Brazil, Mexico, Colombia), Bayer has installed exactly the same kind of incinerators, to exactly the same standards, as the ones which it operates in Germany. Moreover, in developing countries such as Pakistan it is endeavouring to recover obsolete stocks of pesticides or plant-health products from its factories in order to destroy them. To this end, the German Cooperation and Development Agency is working with Bayer to pinpoint the whereabouts of existing stocks. In all the countries where Bayer has a presence, the company operates in accordance with national legislation. Bayer's board has decided to apply German production standards in its subsidiaries. The Bayer representative stated that the company did not export dangerous wastes outside the European Union. Regarding the use of chemicals in lax safety conditions, and having regard to the climate in third-world countries, Bayer does not believe that the improper use of chemicals in developing countries is the responsibility of the manufacturer.

III. CONCERNS EXPRESSED BY NON-GOVERNMENTAL ORGANIZATIONS

A. Export of ships for extremely hazardous recycling operations

54. Both in Germany and the Netherlands, representatives of Greenpeace International urgently drew the attention of the Special Rapporteur to the health and environmental dangers posed by the export to Asia of old ships contaminated by dangerous substances. These ships originate in OECD member States, including the Netherlands and Germany. India is apparently the prime importer of ships destined for scrap (70 per cent of the total, providing 15 per cent of that country's steel needs), followed by Bangladesh, Pakistan, China and the Philippines.

55. Ships destined for ship-breaking contain significant quantities of asbestos, PCBs, hydraulic fluids, paints containing lead and/or other heavy metals, tributylin or TBT antifouling coatings, contaminated holding tanks and other substances rendering them hazardous waste and extremely dangerous to human health and the environment when scrapped in the existing ship-breaking yards.

56. According to the information provided by Greenpeace, 40,000 people are employed in the ship-breaking industry, working in conditions that are particularly dangerous for their life and health. For example, at Alang in Gujarat State, the largest ship-breaking yard in the world, workers are allegedly exposed on a daily basis, both at work and at rest, to asbestos, dioxin, and polychlorinated biphenyls (PCBs) in paints, plastic products, felt gaskets, machinery mounts, adhesives and electrical cable insulation on board the ships. They also inhale dangerous substances when they demolish the ships' hulls using blowtorches or when they burn irrecoverable items in the open. Fungicide paints applied to the hull and lead-containing paint also represent a health hazard and a threat to the environment. It is estimated that at least one worker dies every day and that 25 per cent of the workforce develops cancer in the medium term. Others are killed by explosions caused by the ignition of flammable gases trapped within the ships. It is reported that the soil, air and water in and around Alang are polluted as a result of the ship-breaking which takes place directly on the shoreline. Conditions are said to be similar at the ship-breaking yard in Mumbai (Bombay) and around Chittagong in Bangladesh. Greenpeace believes that working conditions might be better in China, although they are not entirely risk free.

57. Indian law prohibits the import of toxic waste from OECD countries; it also outlaws ship-breaking along its coastline. In May 1997, the Indian Supreme Court decided that no import should be made or permitted by any authority or any person of any hazardous waste which is already banned under the Basel Convention or to be banned hereafter with effect from the date specified therein. The 19 February 1991 Coastal Regulation Zone Notification prohibits the following activities within the Coastal Regulation Zone: manufacture or handling or storage or disposal of hazardous substances; discharge of untreated wastes; and effluents from industries. Moreover, the Central Pollution Control Board states in its Environmental Guidelines for Shipbreaking Industries that "Old vessels containing or contaminated with PCBs, waste asbestos dust and fibres, lead compounds are accordingly classified as hazardous materials. The customs authority and/or the concerned State Maritime Board should ensure this and issue a certificate to this effect that the vessel is free from prohibited [materials]". According to Greenpeace, these pronouncements have long been ignored and have scarcely begun to be enforced.

58. Under the Basel Convention, ships destined for the breaker's yard are deemed to be wastes and, to the extent that they contain dangerous substances, they are treated as hazardous wastes (art. 2, para. 1). When such ships destined for ship-breaking involve a transboundary movement, i.e., move from an area under the national jurisdiction of one State party to or through an area under the national jurisdiction of another State party, they are subject to the Basel Convention (and other applicable regional hazardous waste trade regimes). In the case that such ships move from an OECD country to a non-OECD country, the Basel ban applies and the movement is prohibited. Furthermore, under the Basel Convention, a transboundary movement from any State party to any of the ship-breaking operations in non-OECD countries is prohibited because, due to the conditions in the ship-breaking yards, it would not constitute "environmentally sound management" as required by the Convention.

59. A potential problem may exist, however, because a transaction to send a ship for breaking up may potentially avoid the Basel Convention by hiding the fact that the ship is destined for ship-breaking. If the transaction simply indicates a sale of the ship to, e.g., an owner

in a non-OECD country, and after the ship is in that country it is determined to be destined for ship-breaking, no transboundary movement of "waste" would appear to have occurred. This scenario represents a possible legal loophole which needs to be addressed.

60. There is also the legal problem of the large number of ships flying Liberian, Maltese, or Panamanian flags of convenience. When these vessels are sent to the breaker's yard, they are not legally covered by the prohibition on the export of dangerous wastes for disposal or recycling to other States parties by member States of OECD, the European Union and Liechtenstein. This is an issue which needs to be addressed within the framework of the International Maritime Organization (IMO), for example by establishing the responsibility of the owner of the vessel between its original purchase and its sale for scrap; in most cases this shipowner has registered offices in an OECD country. In June 1999 the United Nations Development Programme (UNDP) mandated the Basel Convention's technical working group to collaborate with IMO on the preparation of environmentally-friendly ship-breaking guidelines. This issue will also be considered at the Conference of States parties in Basel in December 1999.

B. Export of plastic wastes containing hazardous substances

61. The attention of the Special Rapporteur has been called to the potential danger for life and health that the export of plastic wastes represents. Because of the emission of large amounts of dioxins and the release of heavy metals like lead and cadmium, burning of PVC-covered cables is forbidden in the Netherlands.

62. Allegedly, each year 15,000 tonnes of PVC waste from cables is created in the Netherlands. There are also indications that a considerable amount of cable waste is imported from Germany and Eastern European countries. In the Netherlands, the biggest cable waste processor and dealer is the Van Hout Group. They own companies at several locations in the Netherlands, and also in Germany, Belgium, the United Kingdom and South-East Asia; in China they have a joint venture with the name Jan-Hout Metal Recycling. The Van Hout Group processes in the Netherlands 25,000 tonnes of cables a year. According to Van Hout all cables are mechanically stripped, in China as in the Netherlands. The copper fraction is sold (proceeds: around 1,000 Dutch guilders/1,000 kg). The mixed plastic fraction has a negative value; it is dumped or burned. The costs for dumping are 200 FL/1,000 kg, and burning 200-300 FL/1,000 kg. Several tests are conducted to separate the plastic mixture into the different plastics (PVC, PE and rubber), but in the Netherlands this is not economically profitable.

63. The Van Hout Group exports cable waste to China. Also other processing or trading companies confirmed that cables are exported mainly to China and that Van Hout is the biggest exporter. Pakistan was also named, but the export figures were considerably less than the ones for China. According to the firm, in 1998, Van Hout exported 5,000 tonnes to China. In the past, they exported far more - 15,000 to 20,000 tonnes. The Special Rapporteur was also informed that each year 80,000-100,000 tonnes of cables are exported by all Dutch companies together.

64. Export is economically interesting because in China the PVC-containing residue can be sold for 60/70 cents/kg, according to Van Hout. The value of secondary PVC in the Netherlands is 25-50 cents/kg. But the main reason for Chinese companies to buy cables is the copper content.

65. According to informants, cables are exported to several companies in China, including the Changshu Yuebo Copper Industry in Jiangsu (near Shanghai) and Signma Metals in Shanghai, which are among the biggest importers; both factories have copper-smelting facilities. Interviews with workers at the factories revealed that they are exposed to hazardous fumes emanating from the burning of cables containing PVC. Sooner or later, a lot of people working for these plants acquire health problems affecting kidneys, lungs and liver.

66. The Sigma factory is a big plant that looks clean and well-organized from the outside. But even for this big company it is unclear what happens inside. The stories of the workers are alarming. In the poor Chuangdong area south of Hong Kong, there are also many small family companies which buy cables from small traders; no doubt these small companies take hardly any safety measures and just burn cables.

67. According to European legislation, cable waste is "green list" waste, i.e. non-hazardous. This means that the export of cable waste is legal in the Netherlands, to whatever country, as long as it is recycled there. Nevertheless, the effect on the environment and human health resulting from poor recycling processes, is a matter for concern.

C. Human rights abuses resulting from the trade in pesticides

68. All the NGOs which the Special Rapporteur met were of the opinion that the incalculable consequences for life, health and the environment resulting from the trade in and use of pesticides, particularly in developing countries, were likely to become one of the major problems of coming decades. Some 5 million tonnes of pesticides are released into the environment every year. Despite the adoption in September 1998 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (better known as prior informed consent (PIC), see also E/CN.4/2000/50, paras. 44-48), and the elaboration of legislation in a number of countries to regulate the export, import and use of pesticides, the situation in many developing countries is still a matter of concern owing to the existence of obsolete pesticide stocks. Moreover, there has been a sharp increase in the use of pesticides in these countries, which are unable adequately to control the use of especially dangerous products.

69. As a result, transnational companies should be held responsible not only for their exports, but also for the way in which their products are used. According to the representative of the NGO Pesticide Action Network (Pestizid Aktions-Netzwerk (PAN)), the statements by major German chemical companies such as Bayer, BASF or Hoechst that developing countries no longer import products which cannot be sold or used in Germany, and that they do not import obsolete products, must be treated with caution. These companies apparently abide by the laws of the importing country and ensure that they do not export products which are outlawed in those countries. The Bayer corporation claims that it is company policy not to export dangerous chemicals to countries lacking the proper legislation. However, the Special Rapporteur's

attention has been drawn to the situation on the ground, the existence of illicit trafficking in pesticides and the injury to life and health resulting from the improper use of these products i certain developing countries. The example of Cambodia has been cited. Over 50 kinds of dangerous pesticides and organophosphorous compounds such as parathion methyl, mevinph methamidophos and monocrotophos are apparently being illegally exported to Cambodia through Thailand and Viet Nam. One of these products, Folidol, is an extremely dangerous pesticide manufactured by Bayer A.G.; another, Thiodan, is manufactured by the German firm AgrEvo.

70. The pesticides find their way on to all markets in the capital city of Phnom Penh, as w as in the provinces. The labels are incomprehensible to Cambodians as they are printed in Th or Vietnamese. In Phnom Penh, the products are sold on market stalls specializing in goods u in agriculture. But even here the traders have little knowledge of the pesticides they offer. In provincial towns, the situation is slightly different: a wide range of pesticides are sold on less specialized stalls which sell a varied range of goods, one can find small bottles of Folidol amo instant coffee and milk powder, medicine and drug-store articles. The speed and effectivenes organophosphates convince farmers. Pesticides are put to use with no knowledge of target cultures, target pests, dosage, risks and protective measures. Hardly any farmers use the chemicals in the correct way. Different products are often mixed together without knowledge the intrinsic properties of the mixture.

71. Even if the labels were printed in Khmer, only a few would be able to read them. Sho the users be able to read and understand the labels, most of them would find it difficult to adh to the recommended protective measures. Protective clothing is expensive and unbearable to wear in the humid tropical heat. Wearing rubber boots and storing products in a locked place also unrealistic for many users. Clothing worn while applying pesticides is not necessarily changed or washed, but is treated just as any other piece of clothing. Instructions to leave a period of time between the last pesticide application and the harvest are not followed, so that sometimes the crop is sprayed the day before the harvest. It is even common for pesticides to used to kill fish either for private consumption or to be sold on the market.

72. In view of the extremely poor conditions under which pesticides are used, Pesticide Action Network informs the Special Rapporteur that it has requested Bayer to ensure that Folidol, which plays an important role in the Cambodian pesticide market, is not sold under those conditions in Cambodia.

IV. CONCLUSIONS AND RECOMMENDATIONS

73. The Special Rapporteur was pleased with her mission to Europe, following on her visi to Africa and Latin America in previous years. It enabled her to gain a more diverse and comprehensive understanding of the central theme of her mandate. She is grateful to the Ger and Netherlands Governments for being among the first to accede to her wish to visit industrialized countries. The constructive discussions which took place during her mission w distinguished by a spirit of complete cooperation and openness.

74. The Special Rapporteur is aware that Germany and the Netherlands are not representa of all the countries in the European Union or OECD, and she therefore hopes to visit other

industrialized countries in 2000. Despite the reservations which had been expressed about her mandate - for example, that the Commission on Human Rights was not the appropriate body to discuss the issue - the Special Rapporteur duly notes the willingness of the Governments of both countries to cooperate fully with all Special Rapporteurs. The representatives of both Governments stressed their commitment to sustainable development and measures to counteract the illicit trade in toxic and dangerous products and wastes, a commitment backed up by international obligations and specific national measures.

75. While attentive to the concerns of developing countries, the Governments of Germany and the Netherlands believe that the illicit trade in toxic products and wastes is a diminishing problem of limited scale, at least in the context of North/South relations. Problems arising from the transport of dangerous wastes - an increasingly rare occurrence - cannot be entirely excluded, such accidents can and do occur independently of the will of the Governments concerned, and steps have been taken to enforce the principle of the return of unwanted products and wastes to the country of origin at the expense of the initial shipper.

76. Germany drew attention to its special fund designed to handle such contingencies; contributions to this fund will actually be reduced for want of claims. The German authorities do not understand why Germany should be censured when in 1999 only two cases of illegal waste exports (to European countries) were brought to light and dealt with (the wastes were re-imported and the exporters were prosecuted). The Special Rapporteur notes the utility of such a fund and hopes that other developed countries will set up or report similar mechanisms.

77. Germany and the Netherlands are sympathetic to the argument that developing countries do not always have the means or the qualified personnel to understand the nature of the products entering their territory or to counteract illicit trafficking. Both Governments are resolved to increase technical assistance in this field. The Special Rapporteur also recommends greater information-sharing and a multiplication of focal points in order to activate interregional early-warning systems.

78. In cases where, for various reasons, it is impossible to trace the path taken by illicit traffic or to determine the country or firm of origin of dangerous products or wastes which have entered a developing country illicitly or illegally, the Special Rapporteur requested her interlocutors to examine ways in which States parties to the Basel Convention could voluntarily help to eliminate such products or wastes through procedures based on the provisions of the Convention.

79. During her mission, the Special Rapporteur took the opportunity to raise her interlocutors' awareness of alleged problems which have arisen in developing countries following the intensive and uncontrolled use of chemicals, agrotoxic products and persistent organic pollutants. There is a risk that this may become a particularly acute problem

80. She also raised the legal, economic, social, human and environmental problems caused by the export of contaminated ships destined for scrap in developing countries. Both Governments regard such ships as "hazardous wastes" as defined under the Basel Convention, and accordingly they intend to ban their export to non-OECD countries. The Special Rapporteur said that she would like to see the various aspects of this issue examined in the appropriate international forums (UNEP, secretariat of the Basel Convention, IMO) with a view to arriving at a satisfactory solution.

Annex

LIST OF PERSONS, DEPARTMENTS, ENTERPRISES AND ORGANIZATIONS CONSULTED BY THE SPECIAL RAPPORTEUR DURING HER MISSION

NETHERLANDS

Ministry of Foreign Affairs

Ms. Welment van Aardenne, Human Rights Department, Regional and Global Organizations Division

Ms. Kanta Adhin, Human Rights Department, Policy Development and Coordination Division

Mr. Michiel van der Zee, Director, Economic Cooperation Department

Ms. Sonja Kuip, Economic Cooperation Department, United Nations Funds and Economic Affairs Division

Mr. Ron Lander, International Environmental Policy, Instruments and Water Management Division

Minister of Housing, Spatial Planning and Environment

Mr. Kees Keuzenkamp, Head, Department of Hazardous Waste, Directorate of Waste Management Policy

Mr. Joost Cornet, Head, Enforcement Division, General Inspectorate of Environment

Mr. Johan Huijbregts, Inspector, General Inspectorate of Environment

Ministry of Health, Welfare and Sport

Mr. Herman Timmer, Head, Department of Pharmaceutical Affairs

Mr. Piet Vree, Deputy Chief Inspector for Health Care

Dr. Martyin ten Ham, Senior Adviser, International Department for Pharmaceutical Affairs

Committee on Human Rights of the Advisory Council on International Affairs

Dr. Willem van Genugten, member of the Committee, Professor of Human Rights, University of Nijmegen

Dr. Irene Dankelman, member of the Committee, Coordinator of Sustainable Development, Nijmegen University

Mr. Tiemo Oostenbrink, Executive Secretary, Committee on Human Rights

District Court of Justice of The Hague

Mr. Gert Haverkate, Senior Public Prosecutor

Dr. Roel Fernhout

Non-governmental organization

Ms. Claire Tielens, Responsible for Toxic Waste Campaign, Greenpeace-Netherlands

GERMANY

Ministry of Foreign Affairs

Mr. Klaus Metscher, Director, Human Rights Department

Dr. Gerhard Fulda, Deputy Director, Economic and Environmental Section

Mr. Gerd Poppe, Commissioner for Human Rights, Foreign Office

Dr. Sabine Wild, Senior Officer, Human Rights Department

The Federal Ministry of Environment, Nature Protection and Nuclear Safety

Ms. Probst, Federal Secretary of State for Environment, Nature Protection and Nuclear Safety

Mr. Rüdiger Wagner, Head of Division

Mr. Jürgen Schmölling, Director, Federal Environment Agency

Ms. Brach, Officer, Federal Environment Agency

Mr. Thomas Graner, Officer, Ministry of Environment

Ministry of Environment, Land Hessen

Mr. Carl-Otto Zubiller, Minister

Kali und Salz, Waste Disposal Site in Herfa Neurode

Mr. Harmut Behsen, Engineer and Manager

Mr. Hartmuth Baumert, Engineer and Manager

Bayer A.G., Leverkusen

Dr. Günter Mischer, Corporate Staff, Quality, Environment and Safety Policy

Dr. Joachim Lemke, Responsible for waste management plant, Leverkusen

Non-governmental organizations

Mr. Andreas Bernstorff, Director, Greenpeace-Germany

Ms. Carina Weber, Executive Director, Pesticide Action Network, Germany

Mr. Roland Fendler, Expert for Industrial Plant Safety, Oeko-Institute

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